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No.

BARRY SCHIMMEL, et al.
Petitioners,

v.

INT'l. ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, et al.
Respondents.

I.

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

Petition For A Writ Of Certiorari To The United States Court of Appeals For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

When a labor organization no longer is the certified representative of a bargaining unit due to a recent representation election, does § 501 of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501, provide a basis:

(1) to seize the assets of the labor organization when the suit is *not* brought for the benefit of the labor organization but instead to distribute the assets to certain former members of the labor organization; and

(2) to prevent the labor organization from utilizing its assets pursuant to resolutions by its governing body passed in furtherance of the objectives set forth in its Constitution and By-Laws, such as organizing other units, communicating with its members, and defending claims arising from its previous representation.

PARTIES

The plaintiffs to this action are the International Association of Machinists and Aerospace Workers, AFL-CIO, and eight individuals, Claudia Davey, John Desmond, Robert Dionne, Kit Furness, Tamara Pierro, Pamela Pinard, Jill Radel and Nina Rensenhouse. The defendants are Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani, and Sheila McCann, sued both as individuals and in their official capacities as officers of the Independent Federation of Flight Attendants.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES ii

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

STATUTE INVOLVED 2

STATEMENT OF THE CASE 2

A. Preliminary Statement 2

B. The Events Leading to the Lawsuit 3

C. Procedural History 7

REASONS FOR GRANTING THE WRIT 10

1. THE DECISION BELOW CONFLICTS WITH THE NINTH CIRCUIT'S DECISION IN *PHILLIPS v. OSBORNE* 10

2. CONTRARY TO THE DECISIONS IN OTHER CIRCUITS, THE DECISION BELOW HAS ALLOWED § 501 TO BE MISUSED TO PLACE UNWARRANTED RESTRICTIONS ON THE EXPENDITURE OF UNION FUNDS FOR LEGITIMATE

UNION PURPOSES SUCH AS ORGANIZING. 19

3. THE COURT BELOW DISREGARDED IFFA'S INTERPRETATION OF ITS CONSTITUTION AND BY-LAWS, IN DEROGATION OF THE WIDELY-ACCEPTED PRINCIPLE OF DEFERENCE TO A UNION'S INTERPRETATION OF ITS OWN CONSTITUTION. 24

CONCLUSION 28

TABLE OF AUTHORITIES

Cases:

Air Wisconsin Pilots Protection Committee v. Sanderson, 909 F.2d 213 (7th Cir. 1990), *cert den.* 498 U.S. 1085. 25

Allen v. United Transportation Union, 964 F.2d 818 (8th Cir. 1992). 28

Bonilla v. Bevona, 127 Lab. Cas. ¶10,958, 1993 U.S. Dist. LEXIS 16889 (S.D.N.Y. 1993) 14

Bright v. Schlinke, 119 LRRM 3463 (E.D. Tex. 1984) 18

Brock v. Mazzola, 794 F.2d 427 (9th Cir. 1986) . 17, 18

Council 49, AFSCME v. Adkins, 843 F.2d 1343 (11th Cir. 1988) 19

Local 314, National Post Office Mail Handlers v. National Post Office Mail Handlers, 572 F. Supp. 133 (E.D. Mo. 1983) 14

Local 1053, United Brotherhood of Carpenters v. Los Angeles County District Council of Carpenters, 944 F.2d 610 (9th Cir. 1991) 26

Local No. 48, United Brotherhood of Carpenters v. United Brotherhood of Carpenters, 920 F.2d 1047 (1st Cir. 1990) 19, 26

Maher v. International Brotherhood of Electrical Workers, 15 F.3d 711 (7th Cir. 1993) 26

McNamara v. Johnston, 522 F.2d 1157 (7th Cir. 1975), *cert. den.* 425 U.S. 911 . . . . . 19, 22-24

Newell v. International Brotherhood of Electrical Workers, 789 F.2d 1186 (5th Cir. 1986) 19, 26

Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968) 3, 9, 11, 13, 14, 17

Stelling v. International Brotherhood of Electrical Workers, 587 F.2d 1379 (9th Cir. 1978), *cert. den.* 442 U.S.1944 26

Taylor v. Great Lakes Seaman's Union, Local 5000, 701 F.2d 590 (6th Cir. 1983) 26

Tile, Marble, Terrazzo, Finishers, Shopworkers and Granite Cutters Int'l Union v, Ceramic Tile Finishers Union, 972 F.2d 738 (7th Cir. 1992) 20

United States v. White, 322 U.S. 694 (1944) . . 16, 17

Statutes:

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1337 7

28 U.S.C. §§ 1331 7

29 U.S.C. § 501 . . . . . *passim*

PETITION FOR A WRIT OF *CERTIORARI* TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners Barry Schimmel, Flip Becker, Sheila McCann, Terry Fitzgerald and Jerry Giustiniani, respectfully pray that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Eighth Circuit entered on November 10, 1997.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is officially reported at 128 F.3d 689, unofficially reported at 156 LRRM 2813 and 134 Lab. Cas. ¶ 10,077, and reprinted in the Appendix to this petition at Pet. App. 7. The opinion of the United States District Court for the Eastern District of Missouri has not been officially or unofficially published. The district court's decision is reprinted in the Appendix to this petition at Pet. App. 20.

JURISDICTION

The judgment of the court of appeals was entered on November 10, 1997. A timely Petition for Rehearing with

Suggestions for Rehearing In Banc was filed and that Petition was denied on December 30, 1997. A timely Application was filed pursuant to Supreme Court Rule 13.5 to extend the time for filing for *certiorari* to April 27, 1998, which was granted by Justice Thomas on March 20, 1998. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTE INVOLVED

This Petition involves the interpretation of § 501(a) and (b) of the Labor Management Reporting and Disclosure Act, 29 U.S.C. § 501, which subsections are set forth in full in the appendix to this Petition. (Pet. App. 38). The entire LMRDA is found at 29 U.S.C. § 401, *et seq.*

STATEMENT OF THE CASE

A. Preliminary Statement

Congress enacted Section 501 of the Labor Management Reporting and Disclosure Act ("LMRDA") to address corruption by labor union officers in the handling of union property. This Petition squarely asks whether, when there is no corruption found by the trial court, § 501 can be used by a rival union and its adherents to seize the assets of a union that has lost a representation election. *Nothing* found in the legislative history of the LMRDA, in any decision by this Court, or in any previously reported

federal or state decision suggests that an independent union has a fiduciary duty to surrender its assets following its decertification as a collective bargaining representative. *Moreover*, this case turns upon the question of whether such an action can possibly be *for the benefit of the labor organization* as required by the literal language of § 501(b). The Ninth Circuit has unequivocally held that it cannot. *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968). But the Eighth Circuit in this case has clearly adopted a contrary view. Under these circumstances, it is appropriate and necessary that the Court grant *certiorari* in order to resolve an important question of federal labor law as to which there is a clear split of authority among the courts of appeals.

B. The Events Leading to the Lawsuit

For a period of nearly twenty years, From April 1, 1977, until March 7, 1997, the Independent Federation of Flight Attendants ("IFFA") was the certified collective bargaining representative for the flight attendants employed by Trans World Airlines, Inc. ("TWA"). Petitioners herein have during relevant times been officers of IFFA.

In October of 1996, the International Association of Machinists and Aerospace Workers ("IAM") began a campaign seeking to obtain the right to represent the TWA flight attendants, who at the time were represented by

IFFA. (Pet. App. 21).[1] The IAM received assistance in the campaign from Sherry Cooper, then the president of IFFA. Cooper, without the knowledge or consent of IFFA's governing body, appeared in a video presentation advocating the IAM and provided the IAM with a mailing list of IFFA members.[2] Five members of IFFA's seven person Executive Board,[3] the labor organization's governing body, opposed the action taken by the IAM and Cooper. (Pet. App. 9).

IFFA's prior achievements as a bargaining representative included restoration of seniority and *status quo*, reinstatement with backpay, and collection and distribution of millions of dollars in strike-related litigation proceeds[4]; improved employment benefits through negotiation;

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[1]Citations to the appendix to this petition are designated as (Pet. App. __). Citations to the record before the Eighth Circuit are designated as (Jt. App. ___).

[2]IFFA's then vice-president, Ralph (Rocky) Miller, also provided assistance to the IAM, and, like Cooper, was eventually removed from office following a trial on internal union charges. (Pet. App. 9).

[3]Those five members, Barry Schimmel, Flip Becker, Sheila McCann, Terry Fitzgerald and Jerry Giustiniani, are the named defendants in this action.

[4]*See TWA v. IFFA*, 809 F.2d 483 (8th Cir. 1987), aff'd 485 U.S. 175 (1988); *IFFA v. TWA*, 819 F.2d 839 (8th Cir. 1987), rev'd in part, 489 U.S. 426 (1989).

aggressive and successful grievance and arbitration resulting in scores of individual reinstatements with backpay; arbitration and litigation efforts resulting in a substantial pay increase; [5] and protection of job security during the TWA bankruptcies.

IFFA's conduct of its union activities has been governed by the IFFA Constitution and Bylaws (hereafter "Constitution").[6] The Constitution sets forth particular principles and objectives for the organization, including perpetuating the organization as an autonomous national union to achieve its principles of solidarity and justice for workers; uniting the men and women of the airline industry into the union; and engaging in educational, legislative and civic activities to advance the interests of workers in the airline industry. (Pet. App. 48-49). During the IAM's campaign, the IFFA Executive Board passed a resolution memorializing the institutional will to continue to fulfill the

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[5]During its representation of the flight attendants, IFFA won an arbitration award requiring TWA to grant flight attendants a series of retroactive pay increases amounting to 8.5 percent. Although the IAM has now been substituted as the party plaintiff, IFFA initiated litigation in the district court to enforce that award, The court has granted a summary judgment motion initially filed by IFFA and issued an order enforcing the award. *IAM v. TWA*, case no. 4:97CV0003 (E.D. Mo)

[6]IFFA's Constitution is set forth in full in the appendix. (Pet. App. 45)

constitutional objectives, even if the raiding union's efforts resulted in decertification as the representative of the TWA flight attendants. (Pet. App. 40).

The campaign by the IAM and Cooper resulted in a petition by the IAM for an election to be conducted by the National Mediation Board ("NMB"). The NMB scheduled an election which was concluded on February 27, 1997. (Pet. App. 21). On February 21, 1997, before the conclusion of the representation election, seven of the plaintiffs signed a letter in which they demanded that the members of the IFFA Executive Board cease all spending of IFFA funds. (Pet. App. 22). Counsel for the IAM prepared the letter for the plaintiffs. (Jt. App. 292). The letter asserted the authority of § 501 of the LMRDA and requested an accounting, but did not identify any conduct on the part of any IFFA officer which purported to have been undertaken in breach of that officer's fiduciary duty. (Pet. App. 22) Plaintiff Desmond acknowledged that he was not aware of any purported misconduct by any IFFA officer at the time he signed the letter. (Jt. App. 296). Notwithstanding the absence of any knowledge of improper conduct by any IFFA officer, the plaintiffs brought this lawsuit seeking relief for an alleged breach of fiduciary duty by the remaining members of the IFFA Executive Board. The complaint was filed on March 3, 1997, three days before the NMB certified the IAM as the new representative for the TWA flight attendants.

C. Procedural History

Plaintiffs sought relief in this action under § 501 of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 501, in the form of a temporary restraining order, a preliminary injunction, and ultimately, a permanent injunction. The plaintiffs asserted jurisdiction under 28 U.S.C. §§ 1331 and 1337, and 29 U.S.C § 501(b). The plaintiffs consisted of the IAM and eight individuals who purported to be members of IFFA[7]. The defendants were officers of IFFA who were sued in their official capacities and also as individuals.

The plaintiffs sought to prohibit the IFFA officers from continuing to use IFFA's operating funds to pursue IFFA's ongoing union activities, including its efforts in opposition to the membership raid being conducted by the IAM, IFFA's campaign to organize other flight attendants, and its participation as both a defendant and a plaintiff in matters arising from IFFA's status as the collective bargaining representative for the flight attendants employed by TWA. Ultimately, the plaintiffs sought transfer of IFFA's assets to the IAM for distribution to the flight attendants now represented by the IAM. The court conducted a hearing on the request for a temporary restraining order on March 7, 1997, and denied the request

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[7]The plaintiffs also alleged, however, that IFFA no longer had *any* members. (Pet. App. 11).

on that date. A hearing on the request for a preliminary injunction took place on March 11, 1997. (Pet. App. 20).

At both of these hearings, the defendants appeared in the only capacity in which they had been served - their official capacity as representatives of IFFA. (Jt. App. 1-4). The individual plaintiffs appeared at the hearings through counsel (except for plaintiff John Desmond who appeared personally and testified in support of the injunction). The individual plaintiffs have been represented throughout these proceedings by IAM's regular counsel, who have presumably been paid by the IAM.

The district court entered its order denying the request for a preliminary injunction on April 9, 1997. (Pet. App. 20). The court found that the IAM lacked standing to pursue an action under § 501(b) against another labor organization. Because § 501(b) only creates a cause of action for members of a labor organization, and because the IAM was clearly not a member of IFFA, the court found that it lacked standing to pursue the § 501(b) claim. (Pet. App. 27).

The court doubted that the individual plaintiffs had standing to pursue an action against IFFA under § 501(b), but chose to assume they did have standing for purposes of the motion for a preliminary injunction, because the plaintiffs at least purported to be members of IFFA. (Pet. App. 30). Nevertheless, the court found that the plaintiffs had failed to establish a likelihood of success on another essential element of an action under § 501(b) - that the

action must be brought for the benefit of the labor organization. (Pet. App. 35). Because the plaintiffs sought the distribution of IFFA's assets to particular individuals, the court concluded that the action had not been brought for IFFA's benefit, citing the Ninth Circuit's decision in *Phillips, supra*. (Pet. App. 36). Accordingly, the court denied the plaintiffs' motion for a preliminary injunction.

The plaintiffs took an interlocutory appeal from that ruling, asserting jurisdiction under 28 U.S.C. § 1292(a)(1). The Eighth Circuit reversed and remanded the matter to the district court with directions to enter a preliminary injunction transferring IFFA's assets to the IAM for the purpose of distribution to the TWA flight attendants. In doing so, Judge Heaney's opinion gave the plaintiffs more than had been requested from the district court and effectively skipped past the preliminary injunction stage to essentially decide the merits. Unable to cite a single case with a similar holding, the court of appeals said that its sweeping result was justified because "principles of equity dictate" that it be so. (Pet. App. 14).

The court of appeals' reversal rested on the conclusion that the interests of IFFA were indistinguishable from the interests of the TWA flight attendants, as those interests were articulated by eight individual proponents of the IAM. (Pet. App. 15). The court of appeals acknowledged that, under normal circumstances, the decertification of a collective bargaining representative would not create a duty of the decertified representative to

return the dues its members paid during the period of representation. (Pet. App. 14). Nevertheless, the court constructed a brand new "equitable" principle that imposed a fiduciary duty on an independent labor organization to return the funds remaining from the dues that had been paid during the time when the independent had served as the employees' representative.

Although the district court had concluded that the plaintiffs' action was not brought for the benefit of IFFA, and that it, therefore, did not satisfy the purposes of an action under § 501(b) (Pet. App. 36), the court of appeals disagreed with the district court's application of the statute. As a result of the remand order, IFFA has lost access to the funds necessary to continue its operations as a labor organization, and even to continue to defend itself in this and other litigation arising from IFFA's duty-bound representation prior to decertification.

REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW CONFLICTS WITH THE NINTH CIRCUIT'S DECISION IN *PHILLIPS v. OSBORNE*

As the district court said, under § 501, "[S]uit must be filed for the benefit of the labor organizations whose officers are being sued and must allege violations of their

fiduciary duties." (Pet. App. 24). The statute provides, in pertinent part, as follows:

> When any officer ... of any labor organization **is alleged to have violated the duties declared in subsection (a) of this section** and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer ... in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief **for the benefit of the labor organization**. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown ....29 U.S.C. § 501(b) (emphasis supplied).

Reading this language, and relying on *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968), the district court concluded that the plaintiffs could not succeed on their claims because they were suing not on behalf of IFFA, the labor organization, but on their own behalf. (Pet. App.

36). In *Phillips*, the Ninth Circuit interpreted § 501 under circumstances similar to those present here:

> Phillips did not properly bring suit under Section 501. The Section specifically provides that a "member may sue . . . to recover damages . . . or other appropriate relief for the benefit of the labor organization." The appellant did not seek such relief. In his complaint he prayed that the moneys be distributed to certain members.
>
> [The plaintiff asked] ". . . for a joint and several judgment against the defendants for such sums as determined by such accounting to have been illegally transferred, and that said defendants be ordered to distribute equally said funds of Local 580 among the paid-up members of said Local as of September 26, 1964, and for an award of reasonable attorneys' fees and expenses of litigation."
>
> In requesting direct relief for certain union members only and not "for the benefit of the labor organization," Phillips disqualified himself from proceeding under Section 501. 403 F.2d at 832 (footnote omitted).

The Eighth Circuit below clearly adopted a different view. Indeed, the relief granted by the Eighth Circuit actually mirrors the relief requested in *Phillips* but rejected by the Ninth Circuit:

> For the foregoing reasons, we reverse and remand to the district court for a determination of the specific amount of IFFA funds necessary to conclude the union's representation of the TWA flight attendants as well as funds derived from sources other than union dues to which IFFA is otherwise entitled. We further direct the district court to order IFFA to transfer the remaining funds to IAM as trustee with the duty to return the funds transferred to the flight attendants who were former members of IFFA pursuant to a formula to be devised by IAM as trustee and approved by the district court. (Pet. App. 19).

The district court noted the similarity between the circumstances of this case and the circumstances in *Phillips*. (Pet. App. 29). The *Phillips* court found that the plaintiff's action sought relief other than that authorized by the statute. 403 F.2d at 831. The Ninth Circuit compared the § 501(b) action to a shareholder's derivative action,

which must be brought for the benefit of the organization. In light of the fact that the litigation had been funded by a rival labor organization and sought the disbursement of union assets to former members who had switched their allegiance to the rival, the court concluded that the action was not brought for the benefit of the organization on whose behalf the suit was purportedly filed. For that reason the Ninth Circuit held that the trial court had properly dismissed the claims. *Id.*; *see also, Local 314, National Post Office Mail Handlers v. National Post Office Mail Handlers*, 572 F. Supp. 133, 138 (E.D. Mo. 1983) (recognizing that in light of derivative nature of § 501(b) action, plaintiffs must plead that relief sought is for the benefit of the union).

In this case it is clear that the plaintiffs have not brought this lawsuit to protect IFFA's assets for the members of IFFA.[8] Indeed, it is even clearer in this case than in *Phillips* that the rival labor organization has taken

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[8]The fact that this action is contrary to the interests of IFFA is underscored by the status of the defendants at the time the court conducted the hearing on the preliminary injunction. At that time, the defendants had only been served in their official capacities as officers of IFFA, and they appeared at the hearing in that capacity. By appearing in their official capacity, the officers were, in effect, appearing as IFFA, the union. *See Bonilla v. Bevona, et al.*, 127 Lab. Cas. ¶10,958, 1993 U.S. Dist. LEXIS 16889 (S.D.N.Y. 1993) (footnote 2) (suit against union officer in his official capacity is implied claim against union).

the lead, insofar as the IAM is a named plaintiff. The plaintiffs sought and the Eighth Circuit allowed relief that used the rival labor organization as a conduit to transfer IFFA's assets to the individual flight attendants.

Other evidence demonstrated that, rather than pursuing the action "to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization [IFFA]," 29 U.S.C. § 501(b), the suit was brought for the benefit of a rival labor organization. Of the plaintiffs, only John Desmond provided evidence in support of his claim. He did **not** testify that he is currently a member of IFFA. He did testify, however, that he had signed a signature card asking for IAM representation, that he had allowed his name to be published in campaign materials supporting the IAM, and that he voted for the IAM. (Jt. App. 294-95). The plaintiffs have been represented in this matter by counsel for the IAM, who have presumably been paid by the IAM. Their demand letter was drafted by counsel for the IAM. (Jt. App. 292). The complaint seeks a transfer of IFFA's assets to the IAM. (Jt. App. 19-20). In light of the ample evidence that this action was brought for the benefit of the IAM, the trial court properly concluded that the plaintiffs had not brought this action for purposes cognizable under the LMRDA. (Pet. App. 36-37).

Because of the similarity in circumstances between *Phillips* and this case, the two decisions simply cannot be reconciled. The Eighth Circuit did not discuss or attempt

to distinguish *Phillips*. Instead, it attempted to escape from the principle that a § 501(b) action must be brought for the benefit of the union by asserting that the interests of IFFA's members were indistinguishable from IFFA's interests. (Pet. App. 15). In reaching that conclusion, however, the Eighth Circuit departed from this Court's teaching in *United States v. White*, 322 U.S. 694 (1944).

In *White*, this Court rejected an attempt by a union officer to assert the privilege against self-incrimination in response to a subpoena of the union's records. The court found that the privilege was a personal privilege, which could not be asserted by an officer who held the union records in his official capacity. The Court articulated the separate interests of the union and the individual as follows:

> Structurally and functionally, a labor union is an institution which involves more than the private interests of its members. It represents organized, institutional activity as contrasted with wholly individual activity . . . . The union's existence in fact, and for some purposes in law, is as perpetual as that of any corporation, not being dependent on the life of any member. It normally operates under its own constitution, rules and by-laws which, in controversies between member and union, are often enforced by

> the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members. . . The official union books and records are distinct from the personal books and records of the individual, in the same manner as **the union treasury exists apart from the private and personal funds of the members.** *White*, 322 U.S. at 701-02 (emphasis supplied).

Unlike the Eighth Circuit's decision in this case, *Phillips* is consistent with the view other courts have taken in determining that only members who are acting for the benefit of the labor organization whose officers are being sued have standing to pursue an action under § 501(b). In *Brock v. Mazzola*, 794 F.2d 427, 430 (9th Cir. 1986), for example, the court determined that the Secretary of Labor lacked standing to pursue an action under § 510(b). The Ninth Circuit recognized the congressional concern that § 501 actions would be utilized as instruments to harass labor organization by those with antagonistic interests. "Evidently Congress was concerned that if non-union plaintiffs had standing to sue under section 501, unions and their leaders would be vulnerable to harassment by **outsiders motivated by considerations other than the welfare of the union . . .**" *Id.* (emphasis supplied); *see*

also Bright v. Schlinke, 119 LRRM 3463 (E.D. Tex. 1984) (because of the derivative nature of § 501(b) action, former members do not have standing).

The district court here relied on *Brock* to determine that the IAM, the organization whose interests are actually being advanced in this action, did not have standing as a § 501(b) plaintiff in this matter. (Pet. App. 27). Although the Eighth Circuit declined to address the district court's finding that the IAM lacked standing in this matter, it nevertheless entered an order giving the IAM control over IFFA's assets. (Pet. App. 19). The Eighth Circuit's decision failed to recognize the fact that the plaintiffs' interests in this matter were aligned with the IAM rather than IFFA, the statutory beneficiary of an action under § 501(b). In reaching its conclusion, the Eighth Circuit created a distinct split between itself and the Ninth Circuit over the proper use of an action under § 501(b). Accordingly, the guidance of this Court is necessary to determine the proper interpretation of § 501(b).

2. CONTRARY TO THE DECISIONS IN OTHER CIRCUITS, THE DECISION BELOW HAS ALLOWED § 501 TO BE MISUSED TO PLACE UNWARRANTED RESTRICTIONS ON THE EXPENDITURE OF UNION FUNDS FOR LEGITIMATE UNION PURPOSES SUCH AS ORGANIZING.

Although this Court has not yet addressed the interpretation of § 501 of the LMRDA, the federal courts have regularly acknowledged that Congress did not intend for the LMRDA to provide the judiciary with a license to engage in detailed regulation of internal union affairs.[9] Instead, Congress intended for § 501 to address the specific

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[9]*See e.g., Local No. 48, United Brotherhood of Carpenters v. United Brotherhood of Carpenters*, 920 F.2d 1047, 1051 (1st Cir. 1990) ("There is a well-established, soundly based policy of avoiding unnecessary judicial intrusion into the affairs of labor unions."); *Council 49, AFSCME v. Adkins*, 843 F.2d 1343, 1347 (11th Cir. 1988) ("Section 501 is not an invitation for courts to substitute their judgment on how a union should be managed for that of union officers."); *Newell v. International Brotherhood of Electrical Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986) ("Courts should strive to avoid interference with internal union affairs."); *Stelling v. International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1387 (9th Cir. 1978), *cert. den.* 442 U.S. 944 ("[J]udicial interference should be undertaken only with great reluctance."); *McNamara v. Johnston*, 522 F.2d 1157, 1163 (7th Cir. 1975) *cert. den.* 425 U.S. 911.

problem of corrupt practices by union officials. The Seventh Circuit described the extent to which the federal courts have limited § 501 actions to that purpose in *Tile, Marble, Terrazzo, Finishers, Shopworkers and Granite Cutters Int'l Union v. Ceramic Tile Finishers Union*, 972 F.2d 738, 744-45 (7th Cir. 1992), in which the court found no breach of fiduciary duty in the local's transfer of assets to a mortuary fund to avoid trusteeship by the international. The court stated:

> Section 501(a)'s primary goal is to deal with the problem of corrupt management of funds by union officials. *See Talbot v. Robert Matthews Distrib Co.*, 961 F.2d 654, 666 (7th Cir. 1992); *Corea v. Welo*, 937 F.2d 1132, 1143 (6th Cir. 1991); *Trustees of Operative Plasters' Protective and Benevolent Soc'y*, 794 F.2d 1217, 1221 (7th Cir. 1986); *Ray v. Young*, 753 F.2d 386, 389 (5th Cir. 1985). Consistent with this goal, section 501 duties normally are not violated when a union official acts with authorization, without direct personal gain, and in accordance with the union's constitution and bylaws. *See Council 49 v. Reach*, 843 F.2d 1343, 1347 (11th Cir. 1988). . .

Similarly the legislative history of the Act reflected congressional concern over excessive intrusion into internal union affairs. The Senate Report included the following statements:

> The committee recognized the desirability of minimum interference in the internal affairs of any private organization
>
> . . . .
>
> The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into an area of trade union licensing and destroy union independence. S.Rep. No. 187, 8th Cong., 1st session 7 (1959), Reprinted in I Legislative History at 403, U.S. Code Cong & Admin.News 1959, p. 2523.

Despite this principle of limited interference in internal union affairs, which has been widely accepted among the circuits, the court of appeals in this instance imposed its own sense of "equity" to prevent the IFFA officers from spending IFFA funds for the labor organization's continued union activity. (Pet. App. 15). In so doing, the court of appeals has engaged in much

greater interference with internal union affairs than Congress ever intended. In light of the limits that the Eighth Circuit's decision placed on IFFA's ability to continue to function as a labor organization, the petitioners seek this Court's guidance concerning the extent to which § 501 permits judicial involvement in the financing of union activities.

In *McNamara v. Johnston*, 522 F.2d 1157 (7th Cir. 1975), *cert. den.* 425 U.S. 911, the Seventh Circuit surveyed the legislative history of § 501 and determined that it did not provide a basis for a cause of action for members who disagreed with particular union expenditures.

> Section 501's language and the legislative history of the Landrum-Griffin Act make it clear that Congress placed primary reliance on union rules and policies to establish the scope of a union fiduciary's obligations. The statute itself specifies that union officers act as fiduciaries not for each member but for the labor organization "as a group" and then charges that union officers must expend union money and property "in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder . . ." *McNamara*, 522 F.2d at 1163.

In this case, eight individual plaintiffs, acting in concert with a rival labor organization, objected to IFFA's use of its funds for union organizing, arguing that the union funds should instead be distributed to the individual members. IFFA's participation in these organizing activities was approved by Executive Board resolution. (Jt. App. 108-110, 116). The Constitution vests the officers comprising the Executive Board with the authority to act on behalf of the IFFA membership. (Jt. App. 398). It is consistent with the constitutional purpose to "unite in this Union regardless of sex, age, race, color or national origin, all working men and women employed in the airline industry. . ." *Id*. The IFFA Constitution and By-Laws has been ratified by the membership. (Jt. App. 247-48).

The court of appeals nevertheless upheld the plaintiffs' contention that IFFA had a fiduciary obligation not to spend union funds for organizing activities. (Pet. App. 17). Defendants are unaware (after extensive research) of any other opinion that has held, however, that it is a breach of fiduciary duty to expend union funds for the purpose of organizing. Indeed, such activity is the precursor to collective bargaining. Until a union obtains the right to represent employees, it is unable to bargain on their behalf. There can simply be no doubt that IFFA's efforts to organize other flight attendants is consistent with its fiduciary duty under § 501 and is a legitimate union activity.

The Eighth Circuit's imposition of a fiduciary duty upon IFFA's officers to refrain from the expenditure of union funds on organizing activities is entirely inconsistent with the Seventh Circuit's reasoning in *McNamara v. Johnston*, that § 501 does not reach expenditures on union activities which are authorized by the union's constitution and other governing documents. The decision is also inconsistent with the other circuit court decisions which have rejected extensive judicial involvement in the internal affairs of unions. The Court's guidance is sorely needed to resolve the conflict between the Eighth Circuit's decision in this case and the aversion to judicial interference expressed in the opinions cited above.

3. THE COURT BELOW DISREGARDED IFFA'S INTERPRETATION OF ITS CONSTITUTION AND BY-LAWS, IN DEROGATION OF THE WIDELY-ACCEPTED PRINCIPLE OF DEFERENCE TO A UNION'S INTERPRETATION OF ITS OWN CONSTITUTION.

Faced with the prospect of operating in the aftermath of a raid on its membership by a rival union and an unfaithful president, the IFFA Executive Board surveyed the purposes set forth in the IFFA Constitution and By-Laws. The result was an Executive Board resolution that memorialized the institutional will to continue with IFFA's constitutional mission. (Pet. App. 40). The resolution

very clearly drew its objectives from the IFFA Constitution and By-Laws, which is reprinted in the appendix to this petition. (Pet. App. 45).

In other words, the resolution represented the Executive Board's interpretation of the organizational purposes as set forth in the IFFA Constitution. A number of courts have recognized that they must give substantial deference to a union's interpretation of its own constitution. The Seventh Circuit, speaking through Judge Posner, articulated this principle in *Air Wisconsin Pilots Protection Committee v. Sanderson*, 909 F.2d 213, 218 (7th Cir. 1990), *cert den.* 498 U.S. 1085, stating:

> [A] union's interpretation of its own constitution, by-laws, and other promulgations is entitled to judicial deference; we must be able to call the interpretation unreasonable, perhaps even "patently unreasonable," before we can set it aside. . . The reason is to protect the internal affairs of unions from heavy-handed judicial interference, and is consistent with what has become in the last half century a settled though not total aversion to federal judicial intervention in labor relations. *Id.* at 218 (citations omitted).

The courts regularly discuss the deference accorded

union interpretations of their governing documents in cases arising under the LMRDA.[10] This Court has not,

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[10]First Circuit: *Local No. 48, United Brotherhood of Carpenters v. United Brotherhood of Carpenters*, 920 F.2d 1047, 1052 (1st Cir. 1990) (in action under §§ 101, 302, 501 & 529, the court stated, "we will uphold the International's interpretation of its own governance documents unless that interpretation is patently unreasonable.").

Fifth Circuit: *Newell v. International Brotherhood of Electrical Workers*, 789 F.2d 1186, 1189 (5th Cir. 1986) (in an action under § 101, the court stated "We will not invalidate the International's interpretation of its own constitution unless it is 'patently unreasonable.'").

Sixth Circuit: *Taylor v. Great Lakes Seaman's Union, Local 5000*, 701 F.2d 590, 592 (6th Cir. 1983) (suit under § 101).

Seventh Circuit: *Maher v. International Brotherhood of Electrical Workers*, 15 F.3d 711, 714 (7th Cir. 1993) (in action under § 302 of the LMRDA, the court stated that "We must defer to a union's interpretation of its own constitution so long as the interpretation is not unreasonable.").

Ninth Circuit: *Local 1053, United Brotherhood of Carpenters v. Los Angeles County District Council of Carpenters*, 944 F.2d 610, 615 (9th Cir. 1991) (in an action under § 101, the court stated, "In the absence of a direct conflict, we must defer to the UBC's interpretation."); *Stelling v. International Brotherhood of Electrical Workers*, 587 F.2d 1379, 1389 (9th Cir. 1978) (§ 501).

however, spoken to the issue. Supreme Court guidance on the proper role of a labor organization's interpretation of its constitution is especially critical in cases arising under § 501 of the LMRDA. Section 501(a) explicitly refers to union officers' obligations to "manage, invest, and expend [union property and funds] in accordance with its constitution and by-laws and any resolutions of the governing bodies adopted thereunder . . . ."

The court of appeals failed to explain why it rejected IFFA's interpretation of its Constitution. It is not even clear whether the court considered the constitutional basis for the course of action chosen by IFFA's officers. Instead, rather than deferring to the IFFA Executive Board's interpretation of its mission, the court of appeals imposed its own notion of the proper steps for IFFA to take in the wake of decertification. Nothing in the LMRDA and no case relied upon by the court of appeals requires a union to cease functioning simply because the majority of its members have chosen another union to represent them. The well established body of federal labor law will not allow the court to substitute its own sense of "equity" for the judgment of a duly elected Executive Board, acting in accordance with the clear terms of the union Constitution.

Section 501 requires a union to utilize its property and funds in accordance with its governing documents, including its constitution and by-laws. Until now, the Eighth Circuit, in accord with the other federal courts to

address the subject, has deferred to the reasonable interpretations given union constitutions by their governing bodies.[11] Although research has not revealed any case in which this Court has spoken to the deference accorded the interpretation unions give their own governing documents, the circumstances of this case warrant Supreme Court guidance on that principle.

CONCLUSION

This Court has not yet spoken to the interpretation of § 501 of the LMRDA. As is evident from the circumstances of the instant case, a misinterpretation of the statute can have a devastating impact on the ability of a labor organization to function. The decision by the Eighth Circuit created a split among the circuits by allowing a rival labor organization and its adherents to seize the assets of an independent labor organization. Supreme Court intervention is necessary to resolve the split among the circuits. The extent to which the federal courts may intervene in union decisions, made pursuant to their constitutions and by-laws, concerning the expenditure of union funds for such union activities as organizing is also and issue which the Court is yet to address. Because of the inconsistency between the decision rendered by the Eighth

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[11] *See Allen v. United Transportation Union*, 964 F.2d 818 (8th Cir. 1992).

Circuit and the decisions of the other circuits, Supreme Court review is essential.

We respectfully request that the Court grant the Petition for *Certiorari*.

Respectfully Submitted,

Steven A. Fehr
Donald R. Aubry
JOLLEY, WALSH, HURLEY,
RAISHER & ROHER, P.C.
204 W. Linwood Blvd.
Kansas City, Missouri 64111
(816) 561-3755
(816) 561-9355 (fax)

APPENDIX A

SUPREME COURT
OF THE
UNITED STATES OF AMERICA

EXTENSION OF TIME TO FILE
PETITION FOR A WRIT OF CERTIORARI
MARCH 20, 1998

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

WILLIAM K. SUTER
CLERK OF THE COURT

March 20, 1998

Mr. Steven Fehr
Jolley, Walsh, Hurley et al.
204 West Linwood Blvd.
Kansas City, MO 64111

Re: Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani and Sheila McCann
v. International Association of Machinists and Aerospace Workers, AFL-CIO, et al.
Application No. A-696

Dear Mr. Fehr:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Thomas, who on March 20, 1998, extended the time to and including April 27, 1998.

This letter has been sent to those designated on the attached notification list.

Sincerely,
WILLIAM K. SUTER, Clerk
By /s/ S. E. Spagnolo
Sandra Elliott Spagnolo
Assistant Clerk

NOTIFICATION LIST

Mr. Steven Fehr
Jolley, Walsh, Hurley et al.
204 West Linwood Blvd.
Kansas City, MO 64111

Mr. Joseph Guerrieri
1331 F Street
Suite 400
Washington, DC 20004

Clerk
United States Court of Appeals for
the Eighth Circuit
511 U.S. Court & Customs House
1114 Market Street
St. Louis, MO 63101

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

ORDER DENYING REHEARING
FILED, DECEMBER 30, 1997
Page 3

JUDGMENT
FILED, NOVEMBER 10, 1997
PAGE 5

OPINION
FILED, NOVEMBER 10, 1997
PAGE 7

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2119

International Association of Machinists and Aerospace Workers, AFL-CIO, Claudia Davey; John Desmond; Robert Dionne; Kit Furness; Tamara Pierro; Pamela Pinard; Jill Radel; Nina Resenhouse;	*	
Appellants;	*	Appeal from the
	*	United States
v.	*	District Court for
	*	Eastern District of
Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani, Sheila McCann, in their official capacities as officers of the Independent Federation of Flight Attendants and in their individual capacities;	*	Missouri
Appellees.	*	

The suggestion fox rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 30, 1997

Order Entered at the Direction of the Court:

/s/ Michael E. Gans

Clerk, U.S. Court of Appeals , Eighth Circuit

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2119

International Association of Machinists and Aerospace Workers, AFL-CIO, Claudia Davey; John Desmond; Robert Dionne; Kit Furness; Tamara Pierro; Pamela Pinard; Jill Radel; Nina Resenhouse; Appellants;	*	Appeal from the United States District Court for Eastern District of Missouri
v.	*	
Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani, Sheila McCann, in their official capacities as officers of the Independent Federation of Flight Attendants and in their individual capacities; Appellees.	*	

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court, briefs of the

parties and was argued by counsel.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is reversed and the cause is remanded to the district court for proceedings consistent with the opinion of this court.

November 10, 1997

A true copy.

Attest: /s/ Michael E. Gans

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-2119

International Association of Machinists and Aerospace Workers, AFL-CIO, Claudia Davey; John Desmond; Robert Dionne; Kit Furness; Tamara Pierro; Pamela Pinard; Jill Radel; Nina Resenhouse; Appellants;	* * * * * * * * * * * *	Appeal from the United States District Court for Eastern District of Missouri
v.	* * *	
Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani, Sheila McCann, in their official capacities as officers of the Independent Federation of Flight Attendants and in their individual capacities; Appellees.	* * * * * * * * * * * *	

Submitted: September 10, 1997
Filed: November 10, 1997

Before BEAM, FLOYD R. GIBSON, and HEANEY, Circuit Judges.

HEANEY, Circuit Judge.

International Association of Machinists and Aerospace Workers (IAM) and eight flight attendants (individual appellants) for Trans World Airlines (TWA) appeal from the district court's denial of their motion for a preliminary injunction against the Independent Federation of Flight Attendants (IFFA), an unincorporated labor organization. Because IFFA has no representational responsibilities on behalf of the TWA flight attendants, we conclude that IFFA is not entitled to retain funds that reflect union dues paid by the flight attendants beyond those necessary to conclude representation. Therefore, individual appellants are entitled to a preliminary injunction. We reverse.

I.

Prior to March 6, 1997, IFFA was the official collective bargaining representative of the TWA flight attendants. These attendants were the only group IFFA represented and, consequently, IFFA's sole source of union dues. Additionally, IFFA's only collective bargaining agreement was with TWA. In the fall of 1996, IAM submitted a bid to merge with IFFA. Sherry Cooper, president of IFFA, supported the merger but IFFA's executive board rejected the bid. Subsequently IAM sought to become the TWA flight attendants' sole collective bargaining representative. With the help of Cooper, IAM acquired

IFFA's membership lists and mailed materials urging the flight attendants to execute authorization cards that would allow IAM to seek a representation election with the National Mediation Board (NMB). After receiving sufficient authorization cards, the NMB scheduled a union representation election to be held on February 27, 1997.

On February 4, 1997, Sherry Cooper resigned the IFFA presidency while charges of dual unionism were pending against her for her support of IAM. Cooper's successor as IFFA president, Rocky Miller, distributed a letter also advocating IAM as the new collective bargaining representative, after which he also faced charges of dual unionism. The IFFA executive board opposed IAM's succession as the TWA flight attendants' collective bargaining representative.

Shortly before the election on February 21, 1997, the individual appellants sent a letter to IFFA.[1] Pursuant to the Labor Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. § 501(b),[2] they demanded "an immediate

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[1]One of the eight individual appellants, Kit Furness, was not a signatory to the February 21, 1997 letter but made identical demands on IFFA in a letter dated March 1, 1997.

[2]Prior to bringing Suit under § 501 of the LMRDA, there must first be an allegation that a union official has breached a fiduciary duty owed to the labor organization or its members. Second, a member of the labor organization must request that the labor organization or its governing board

accounting of the current funds and assets of IFFA" and "that no further funds or assets be expended and that they be held in trust for the benefit of TWA flight attendants pending the outcome of the representation election."[3] (Jt. App. at 344.) Also on February 21st, IAM sent a letter requesting that IFFA safeguard its assets as well as "cooperate in an orderly audit and transfer of all assets and records to [IAM]" after the election. (Jt. App. at 345.)

On February 25, 1997, IFFA responded by letter requesting a clarification of who the individual appellants believed had violated their fiduciary duties. IFFA also stated that without information about a specific violation, IFFA would not have sufficient information to process individual appellants' request for an accounting. On the same day, IFFA's executive board awarded themselves unused vacation time and expressed their intention to fund a campaign to organize flight attendants at Continental Airlines.

On February 27, 1997, the flight attendants elected

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remedy the breach by taking such action as "secur[ing] an accounting or other appropriate relief " 29 U.S.C. § 501(b).

[3]The letter went on to state that "[e]ach officer shall be individually liable for damages, attorney's fees and other appropriate relief should you violate your fiduciary duty in failing to give us an accounting or by wasting our funds." (Jt. App. at 344.)

IAM as their collective bargaining representative.[4] The day after the election, IFFA's secretary-treasurer, Barry Schimmel, transferred at least $700,000 of IFFA funds into new accounts; and IFFA filed a lawsuit to prevent appellants from obtaining an accounting of IFFA's funds and to enjoin them from filing suit in this case.

On March 3, 1997, appellants filed their own action for declaratory judgment and injunctive relief against IFFA. Appellants argued that, because IFFA had no collective bargaining agreement, no members, and no duties of representation, and because the IFFA executive board continued to hold and expend IFFA funds solely to advance its "political power and self[-]interest," the executive board was in breach of its fiduciary duties.[5] (Jt. App. at 41.) Appellants sought to enjoin the IFFA executive board from

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[4]According to NMB mediator Maurice Parker, there were 5,139 employees eligible to vote in the election: 2,886 voted for IAM representation; 1,078 employees voted for IFFA representation; 657 voted for other representation; and 7 votes were void. (See R. App. at 126.)

[5]In discussing the fiduciary duties owed by union officials, § 501(a) of the LMRDA reads in relevant part: "The officers . . . and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person . . . to hold its money and property solely for the benefit of the organization and its members . . . ." 29 U.S.C. § 501(a).

expending additional IFFA funds and to require either the transfer of IFFA's funds to IAM to be held in trust for the TWA flight attendants or the return of those assets to the flight attendants themselves.

On March 6, 1997, the NMB certified JAM as the TWA flight attendants' official collective bargaining representative. On April 9, 1997, the district court denied appellants' motion for a preliminary injunction. In denying the motion, the district court noted that the LMRDA only provides a cause of action for union members and determined that, as a rival union, IAM lacked standing to sue IFFA. The court also held that, although the individual appellants had standing, they were not entitled to an injunction under the factors enumerated in Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 112 (8th Cir. 1981) (en banc).

On appeal, appellants argue that the district court erred in determining that IAM lacked standing and that the individual appellants were not entitled to a preliminary injunction. We conclude that the individual appellants are entitled to a preliminary injunction under Dataphase and, therefore, we need not address the issue of whether IAM had standing to sue IFFA on behalf of its members.

II.

In reviewing the denial of a preliminary injunction we ask whether the trial court abused its discretion. Baker Elec. Coop., Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994). An appellant bears a "heavy burden" in seeking to overturn a district court's denial of a preliminary injunction. Rittmiller v.

Blex Oil, Inc., 624 F.2d 857, 859 (8th Cir. 1980) (citation omitted). To evaluate a request for a preliminary injunction, the court considers (1) the probability of success on the merits, (2) the threat of irreparable harm to the moving party, (3) the balance between the potential harm and any injury that an injunction would cause to other interested parties, and (4) whether the public interest supports the issuance of an injunction. Sanborn Mfg. Co. v. Campbell Hausfeld/Scott Fetzer Co., 997 F.2d 484, 485-86 (8th Cir. 1993) (citing Datapbase, 640 F.2d at 114). In evaluating a request for preliminary injunction, no single factor is dispositive and all must be balanced to determine whether to grant the injunction. Id. (citation omitted).

With respect to the first factor, the district court held that because appellants did not allege a specific breach of a fiduciary duty in their February 21, 1997 letter or file suit on behalf of IFFA, they failed to establish a probability of success on the merits. International Ass'n of Machinists & Aerospace Workers, AFL-CIO v. Schimmel, No. 4:97CV357 JCH, mem. & order at 10-12 (E.D.Mo. Apr. 9, 1997) (hereinafter "Mem. & Order"). We disagree.

In determining whether appellants alleged a specific breach of fiduciary duty, we note that § 501(a) of the LMRDA provides that union officials have a duty to hold union funds "solely for the benefit of the organization and its members." 29 U.S.C. § 501(a). Moreover,

> [s]ection 501 should be interpreted broadly in order to insure that elected union officials

> fulfill their responsibilities as fiduciaries to their members, guard union funds from predators, and keep intact all such union funds except those expended in the legitimate operation of the union's business. The funds should be treated as trust funds belonging to the union's members.

United States v. Goad, 490 F.2d 1158, 1162 (8th Cir. 1974).

At oral argument, IFFA stated that the union funds at issue were approximately $1.6 million dollars. Generally, unions provide for the disposition of union funds upon decertification or dissolution in their constitution or by-laws. In such situations, the contract between the union and its members provides the mechanism to dispose of union funds Here, however, IFFA made no provision for the disposal of union funds in the event its only members elected a new bargaining representative. In the absence of such a provision, principles of equity dictate that a union should not retain funds that reflect the dues of its only members and use them in a way that does not advance those members interests. We therefore conclude that IFFA has a fiduciary duty to preserve union funds that reflect the dues paid by the TWA flight attendants and to use them only to advance the interests of the flight attendants. Because we read the individual appellants' February 21, 1997 letter as charging IFFA with a breach of this duty owed to all TWA flight attendants, we conclude that the alleged a specific breach of a fiduciary duty for the purposes of § 501.

Next, we do not agree that the individual appellants may not prevail because they based their claim on a breach of a duty owed to them rather than to the union. In determining whether appellants filed suit to secure "relief for the benefit of the labor organization," 29 U.S.C. § 501(b), we note that "'[t]he members of a labor organization are the real owners of the money and property of such organizations and are entitled to a full accounting of all transactions involving such money and property.'" Goad, 490 F.2d at 1162 (quoting H.R. Rep. No. 741 at 2430 (1959), reprinted in 1959 U.S.C.C.A.N. 2318, 2324); see also Pignotti v. Local 43 Sheet Metal Workers' Int'l Ass'n, 477 F.2d 825, 832-35 (8th Cir. 1973). IFFA's members constituted a single group of like employees. Therefore, bringing suit for the benefit of the labor organization was indistinguishable from bringing suit for the benefit of the real owners of the union funds--the TWA flight attendants. Since the relief sought in this case is the transfer of IFFA funds to IAM to be held in trust for or distributed to TWA flight attendants,[6] appellants have brought suit for the benefit of the labor organization. Because appellants alleged a specific breach of fiduciary duty and filed suit on behalf of

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[6]We note that at oral argument IAM stated that it would be willing to conduct a referendum among its members who were also members of IFFA before March 6, 1997. Such a referendum would allow the union members to decide whether IAM would hold IFFA funds in trust for the TWA flight attendants or whether those flight attendants would receive their pro rata share of those funds.

IFFA, the district court abused its discretion in determining that appellants did not establish a probability of success on the merits.

The second factor requires the moving party to show "the threat of irreparable harm." Dataphase, 640 F.2d at 114. Following its reasoning under the first factor, the district court characterized § 501 as requiring irreparable harm to the union as a whole. The court then determined that, because appellants could only establish harm to themselves individually, they could not make the requisite showing. (Mem. & Order at 9.) Even if the district court properly characterized the irreparable harm inquiry, we do not agree that where a union only represents a single class of employees, harm to the union is sufficiently distinguishable from harm to the flight attendants.

Harm to the union as a whole may be the appropriate inquiry where a union represents members who perform different jobs or work for different employers. The interests of a union as a whole in those instances can vary significantly from the interests of a particular segment of the union's membership. Here, however, the union represented employees, all of whom performed the same job for the same employer. Because the TWA collective bargaining agreement constituted IFFA's sole representational obligation, IFFA's interests were the functional equivalent of the flight attendants' interests. Appellants contend, and we agree, that the TWA flight attendants will be irreparably harmed without an injunction because union funds reflecting their union dues

would finance continued IFFA activities that do not advance the flight attendants' interests. Because appellants have demonstrated that the flight attendants would suffer irreparable harm without an injunction and because harm to the flight attendants is tantamount to harm to IFFA under § 501, we conclude that appellants made the requisite showing under the irreparable harm inquiry.

The third factor compares the potential harm to the moving party with the injury that granting the injunction would likely inflict on other interested parties. Dataphase, 640 F.2d at 114. The district court found that any harm to the appellants arising from continued IFFA activities did not outweigh the injury that granting the injunction would inflict. (Mem. &Order at 9-10.) We disagree.

Having determined that using the proceeds of the TWA flight attendants' union dues for any reason other than solely for the benefit of the flight attendants would cause irreparable harm to the flight attendants, we move directly to the likely harm that an injunction might cause other interested parties. IFFA argues that it needs the flight attendants' funds to organize, to defend the present action, and to aid in the transition to IAM representation. This argument somewhat overstates IFFA's entitlement to those funds and the hardship that would be imposed by the preliminary injunction. We agree that IFFA is entitled to the funds necessary to effectuate the transfer of representation and to the attorneys' fees and costs that it has incurred to date in this litigation. No other purpose proposed by IFFA meets its duty to act solely for the

benefit of the TWA flight attendants. Because IFFA is not entitled to the remainder of the funds,[7] IFFA suffers no injury from an injunction preventing it from expending those funds. As such, the harm to the flight attendants arising from allowing IFFA to continue its operations outweighs any injury that granting the injunction might inflict on any other party.

The final factor requires the district court to determine whether an injunction is in the public interest. Dataphase, 640 F.2d at 114. Stating that appellants failed to show that any IFFA board members converted funds for personal use, the district court found that the public interest would not be served by granting the preliminary injunction. (Mem. & Order at 12-13.) However, the overall purpose of the LMRDA as it relates to this case "is to protect union property and funds, to provide full disclosure of financial affairs of the union, [and] to establish self-help remedies for union members." Goad, 490 F.2d at 1165. For the above reasons, requiring union members to fund activities that do not advance their own interests does not serve the public interest. In this case, the public interest is better served by issuing the injunction.

Contrary to the findings of the district court, appellants have met their burden under Dataphase. Because the individual appellants have demonstrated that they are entitled to an injunction, we need not consider the issue of

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[7]IFFA is entitled to funds that reflect sources independent of union dues. Such sources include sales, raffles, and non-germane accounts.

whether IAM has standing to seek the same remedy in this case.

III.

For the foregoing reasons, we reverse and remand to the district court for a determination of the specific amount of IFFA funds necessary to conclude the union's representation of the TWA flight attendants as well as funds derived from Sources other than union dues to which IFFA is otherwise entitled. We further direct the district court to order IFFA to transfer the remaining funds to IAM as trustee with the duty to return the funds transferred to the flight attendants who were former members of IFFA pursuant to a formula to be devised by IAM as trustee and approved by the district court.
A true copy.

Attest.

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT.

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER
FILED, APRIL 9, 1997
PAGE 20

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, et al., Plaintiffs,	)	
v.	)	Cause No. 4:97CV358 JCH
BARRY SCHIMMEL, et al., Defendants.	)	

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiffs' Motion for a Preliminary Injunction. The Court held a hearing on March 11, 1997 to determine whether an injunction should issue. Having heard testimony and argument from both sides, the Court declines to issue a preliminary injunction.

Plaintiffs in this case are the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM"), an unincorporated labor organization, and TWA flight attendants Claudia Davey, John Desmond, Robert Dionne, Kit Furness, Tamara Pierro, Pamela Pinard, Jill Radel, and Nina

Resenhouse ("individual Plaintiffs"), who were members of the Independent Federation of Flight Attendants ("IFFA") prior to the certification of the IAM as their new collective bargaining agent. Defendants Barry Schimmel, Flip Becker, Terry Fitzgerald, Jerry Giustiniani, and Sheila McCann are members of IFFA's executive board. IFFA is an unincorporated labor organization and served as the official collective bargaining representative of the TWA flight attendants until the National Mediation Board certified the IAM on March 6, 1997.

This case arises out of a failed merger between the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") and the Independent Federation of Flight Attendants ("IFFA"). After its bid for a merger failed before the IFFA Executive Board in the fall of 1996, the IAM set about organizing a new election among the flight attendants at TWA, all of whom were represented by IFFA, in order to become their collective bargaining representative. To accomplish this, the IAM acquired IFFA's membership lists and began mailing materials urging flight attendants represented by IFFA to execute an authorization card allowing the IAM to seek a representation election with the National Mediation Board ("NMB"). After receiving sufficient authorization cards, the NMB sponsored a union representation election to conclude with a vote count on February 27, 1997. The votes were counted on that day, and the vote count approved the IAM as the flight attendants' new representative. On March 6, 1997, the NMB certified the

election results, declaring the IAM to be the TWA flight attendants' union.

Shortly before the vote count, the individual Plaintiffs requested an accounting from IFFA pursuant to the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 501. At the same time, Plaintiffs requested IFFA's assets be secured. In their letter requesting an accounting, Plaintiffs did not claim that IFFA's officers had violated any fiduciary duties. Rather, Plaintiffs demanded that IFFA expend no further funds or assets in order to preserve IFFA's coffers for the TWA flight attendants pending the outcome of the election. Shortly after the individual Plaintiffs sent their demand letter to IFFA, the IAM international president, George J. Kourpias, sent a letter to IFFA requesting that IFFA safeguard its treasury and assets for an orderly audit and transfer of assets to the IAM. Upon receiving these requests, the IFFA executive board requested clarification regarding who had violated their fiduciary duties and stated its intent to continue functioning. On February 28, 1997, Defendants filed a lawsuit before this Court seeking a declaratory judgment to prevent Plaintiffs from obtaining an accounting and asking the Court to enjoin Plaintiffs from filing the instant case. On March 3, 1997, Plaintiffs, pursuant to 29 U.S.C. § 501, requested leave to file this action and asked the Court to issue a Temporary Restraining Order and a Preliminary Injunction.

The Court held a hearing on March 6, 1997, and determined that neither Plaintiffs nor Defendants were

entitled to a Temporary Restraining Order. The Court then set the hearing on Plaintiffs' request for a preliminary injunction for March 11, 1997.

I. Standing

Defendants contend that Plaintiffs lack standing to sue. In particular, Defendants assert that the IAM, as a rival labor organization does not have standing to pursue a LMRDA claim against IFFA and its officers. Defendants also claim that the individual Plaintiffs, because they are now members of the rival union, have voluntarily withdrawn their membership from IFFA and, therefore, are no longer members of IFFA with the right to sue under LMRDA. As a prerequisite to its jurisdiction, the Court must examine whether Plaintiffs have standing to sue under the Landrum-Griffin Act, 29 U.S.C. § 501.

"In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise." Warth v. Seldin, 422 U.S. 490, 498 (1975). Because of the constitutional limitations, "[s]tanding is a threshold issue in every case before a federal court, determining the power of the court to entertain the suit." Boyle v. Anderson, 68 F.3d 1093, 1100 (8th Cir. 1995) (citing Warth, 422 U.S. at 498). "As an aspect of justiciability, the standing question is whether the

plaintiff has alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." Warth, 422 U.S. at 498-99.

"Article III of the Constitution confines the federal courts to adjudicating actual 'cases' and 'controversies.'" Allen v. Wright, 468 U.S. 737, 750 (1984).

> [T]he "case or controversy" requirement defines with respect to the Judicial Branch the idea of separation of powers on which the Federal Government is founded. The several doctrines that have grown up to elaborate that requirement are "founded in concern about the proper--and properly limited--role of the courts in a democratic society."

Id. (quoting Warth, 422 U. S. at 498). The requirement that a litigant must "have 'standing' to invoke the power of a federal court is perhaps the most important of these doctrines . . . Standing doctrine embraces several judicially self-imposed limits on the exercise of federal jurisdiction, such as the general prohibition on a litigant's raising another person's legal rights . . . ." Id. "Though some of its elements express merely prudential considerations that are part of judicial self-government, the core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992).

[T]he irreducible constitutional minimum of

> standing contains three elements: First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally-protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly . . . . . trace[able] to the challenged action of the defendant, and not . . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Id. at 560-61 (citations omitted). The injury in fact test requires that the party asserting the right be among the injured. Id. at 563.

> The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered "some threatened or actual injury resulting from the putatively illegal action. . . ."

Warth, 422 U.S. at 499.

A claim against union officers under section 501 of LMRDA is limited to members of the labor organization.

> When any officer . . . of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any *member of the labor organization*, such *member* may sue such officer . . . in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown . . . .

29 U.S.C. § 501(b) (emphasis added). The IAM, as a separate labor organization, is not a member of IFFA, and it does not claim to be a member. Rather, the IAM asserts that because it is now the collective bargaining unit for the individual Plaintiffs, it should be allowed to bring suit on behalf of its members.

Section 501(b) "explicitly provides that only union members have standing to sue if the union itself fails to bring

an action after being requested to do so." Brock v. Mazzola, 794 F.2d 427, 429 (9th Cir. 1986) (refusing to allow the Secretary of Labor to sue under 29 U.S.C. § 501(b) on behalf of aggrieved union members because the Secretary was not a member of the union). Congress limited the exercise of judicial power over internal union affairs "by confining the exercise of judicial power to actions brought by union plaintiffs." Id at 430. "Evidently Congress was concerned that if non-union plaintiffs had standing to sue under section 5 0 1, unions and their leaders would be vulnerable to harassment by outsiders motivated by considerations other than the welfare of the union and its members." Id.

The IAM, as a separate union, falls outside the category of persons for whom Congress provided a cause of action under Section 501 (b). Thus, because the IAM is not a member of IFFA, the Court finds that the IAM lacks standing to pursue this preliminary injunction.

Defendants also contend that the individual Plaintiffs lack standing to bring this LMRDA action against them. Defendants assert that the individual Plaintiffs have switched their loyalties to another labor organization and should be deemed to have voluntarily withdrawn their membership in IFFA. In making this proposition Defendants rely on Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968).

In Phillips the plaintiff filed suit against the officers of the Local 580, an affiliate of the International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO ("International"), asserting that the officers had violated

LMRDA when the officers, fearing that its membership would vote to disaffiliate the Local from the International, placed the Local's assets in escrow, removing the assets from the reach of the Local membership and placing them under control of the International. Id. at 827. The Local then told the membership that the funds would not be returned. Id. The plaintiff, who voted to disaffiliate from the International and was later elected president of the new Local 580 affiliate of the Association of Western Pulp and Paper Workers ("Western"), filed suit under section 501 of LMRDA, alleging that the officers of the old Local 580 had breached their fiduciary duties by turning the money over to the International. Id. at 828.

The Ninth Circuit determined that the plaintiff lacked standing under LMRDA holding that he was not a member of the union when he filed suit. Id. at 831.

> [A] suit under 501 was intended to be primarily for the benefit of the union whose officers are sued. The condition of membership, which is expressly required by the Section, seeks to insure that a representative of the union, the real party in interest, will properly represent the union's interests in the litigation. The existence of such 'membership' as to authorize suit under Section 501, may, in circumstances like those here present, be negated by a showing that the plaintiff in such a suit cannot be fairly viewed

> as an agent for the interests of the affected union . . . .

Id. at 831-32. Phillips is quite similar to the instant case. In both cases the plaintiffs have voted for and affiliated themselves with new unions but seek to file a suit under LMRDA against their old unions for breach of fiduciary duty. In determining whether the plaintiff in Phillips was a member of the old union, however, the Ninth Circuit merged the concept of standing with the statutory requirement that a suit under section 501 be brought for the benefit of the labor organization against whose officers it has been filed. See 29 U.S.C. § 501(b).

LMRDA itself provides a definition of "member," and the Court must be guided by that statutory definition.

> "Member" or "member in good standing", when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organization.

29 U.S.C. § 402(o). According to the IFFA constitution, the requirements for membership are that one be a collective bargaining unit employee of an airline having a collective bargaining agreement with IFFA, fill out and sign the official

membership application form agreeing to abide by IFFA's constitution and bylaws, and remain current in the payment of all fees, dues, and assessments. Plaintiff's Exhibit 10, p. 5. Defendants do not assert that individual Plaintiffs have violated any of the membership requirements. Instead, they allege that the individual Plaintiffs voluntarily withdrew their membership in IFFA by voting for and joining the IAM. Plaintiffs, however, dispute that they have voluntarily withdrawn their membership in IFFA. Complaint para. 4; Plaintiff s Reply, p. 9. Based on this limited information, the Court cannot say definitively that Plaintiffs have lost their membership in IFFA. Therefore, the Court, for purposes of the preliminary injunction, finds that the individual Plaintiffs have standing as members of IFFA to sue under LMRDA.

II. Preliminary Injunction Factors

When deciding whether tc issue a preliminary injunction the Court considers the following factors: "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties to the litigation; (3) the probability that movant will succeed on the merits; and (4) the public interest." Sanborn Mfg. Co.. Inc. v. Campbell Hausfeld/ Scott Fetzer Co., 997 F.2d 484, 485-86 (8th Cir. 1993); Datapbase Systems v. C.L. Systems, Inc., 640 F.2d 109, 113 (8th Cir. 198 1). "At base, the question is whether the balance of equities so favors the movant that justice

requires the court to intervene to preserve the status quo until the merits are determined." Dataphase, 640 F.2d at 113. The Court does not consider these factors in a vacuum, however. Rather the Court must examine the Dataphase factors in view of the cause of action that has been filed and the rights of the parties to that action.

A. Irreparable Harm

Plaintiffs assert that they will be irreparably harmed if the Court does not issue the injunction because IFFA's assets will be dissipated. Plaintiffs claim they are individually entitled to IFFA's assets or that those assets should be transferred to the IAM. Defendants contend that Plaintiffs' evidence is speculative and fails to demonstrate a threat of irreparable harm to them. Plaintiffs' evidence consisted of descriptions of boxes being removed from the IFFA offices located on airline property by IFFA members and/or its officers and of IFFA accounts being transferred to a different bank. Additionally, Plaintiffs contend that because IFFA is involved in ongoing litigation, its funds will be entirely depleted by the prosecution of those lawsuits.

The threat of irreparable harm must be both real and immediate. Columbia Transit Corp. v. Jones, 572 F.2d 168 (8th Cir. 1978). Because Plaintiffs in a Section 501 suit stand in the shoes of the labor organization, the threat of harm must be to the labor organization. See 29 U.S.C. § 501(b); Phillips, 403 F.2d at 831. The Individual Plaintiffs have not

asserted any harm to IFFA, but rather have asserted harm to themselves and to the IAM. Plaintiffs do not present evidence that accounts have been changed from IFFA's name to someone else's, and Defendants presented unrefuted testimony that IFFA's property had been removed from TWA property and placed in storage in order to preserve it for IFFA. Without evidence of a threat of irreparable harm to IFFA, Plaintiffs are not entitled to injunctive relief.

B. Balancing the Harm against any Injury Granting the Injunction Will Inflict

Plaintiffs claim that Defendants will suffer no harm by the granting of a preliminary injunction. Defendants assert, however, that if the Court issues a preliminary injunction prohibiting any disbursement of IFFA's assets, IFFA will cease to function as an autonomous organization. Defendants presented testimony that the withholding of funds would shut down IFFA. Plaintiffs, however, do not ask the Court to enjoin Defendants from making any expenditures. Rather, Plaintiffs request the Court to have IFFA's assets placed in escrow "while permitting expenditures for the limited purpose of satisfying immediate and legitimate outstanding obligations that can not be delayed until resolution of this case." Plaintiffs' Post-Hearing Memorandum in Support of Preliminary Injunction, p. 17.

In discussing what obligations can be delayed until termination of this case, Plaintiffs assert that Defendants' legal

expenses and organizing activities can be delayed until after a final judgment. Defendants claim to be involved in an organizing campaign on IFFA's behalf and in prosecuting at least one lawsuit brought against ex-IFFA president Sherry Cooper for misappropriation of funds.

Section 501 does not contemplate a Court issuing an order enjoining a union for using its assets for union business, but was promulgated instead to provide a remedy for a breach of fiduciary duty when the union fails to take action. See 29 U.S.C. § 501(b). Additionally, Plaintiffs' request would require tremendous Court oversight to determine what expenditures are "immediate and legitimate outstanding obligations." Plaintiffs do not state how making continued disbursement of funds for union expenses will harm IFFA but only how it will harm the individual Plaintiffs. On the other hand the injury suffered by preventing those disbursements will be suffered by IFFA, the very entity LMRDA seeks to protect. Therefore, the Court finds that Plaintiff s have not shown that the harm of allowing IFFA to operate without Court oversight outweighs the injury granting the injunction would inflict.

C. Probability of Success on the Merits

Plaintiffs bring this action under 29 U.S.C. § 501, which specifies the fiduciary responsibilities union officers must exercise for the union and what action may be taken when those fiduciary duties have been violated. 29 U.S.C. §

501. Union officers are required "to hold [the union's] money and property solely for the benefit of the organization and its members." 29 U.S.C. § 5 01 (a).

When a member alleges that an officer has violated his or her fiduciary obligation, the member has the right to sue that officer to recover damages or an accounting for the benefit of the labor organization only after requesting an accounting from the officers based on the violation of the fiduciary obligation. 29 U.S.C. § 501(b). Such a suit must be filed for the benefit of the labor organizations whose officers are being sued and must allege violations of their fiduciary duties. See, e.g., Local 314, Nat'l Post Office Mail Handlers v. Nat'l Post Office Mail Handlers, 572 F. Supp. 133, 139 (E.D. Mo. 1983); Woody v. Sterling Aluminum Products, Inc., 244 F. Supp. 84, 88, 89 (E.D. Mo. 1965).

> When any officer . . . of any labor organization is *alleged to have violated the duties declared in suosection (a)* of this section and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer . . . in any district court of the United States or in any State court of competent jurisdiction to

> recover damages or secure an accounting or other appropriate relief for *the benefit of the labor organization.* No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown . . . .

29 U.S.C. § 501(b) (emphasis added). "[A]n action under section 501 is a derivative action, in the nature of a shareholder's derivative suit," and plaintiffs filing under this section must seek relief for the benefit of the labor organization. Local 314, 572 F. Supp. at 138.

Plaintiffs, here, do not assert that they have filed this suit on behalf of IFFA but rather on their own behalf. Plaintiffs cannot succeed on the merits without requesting relief for the benefit of the labor organization.[1] See id.;

---

[1]Plaintiffs assert that Pignotti v. Local #3 Sheet Metal Workers' International lesson , 477 F.2d 825 (8th Cir. 1973), does not require the suit to be brought for the benefit of the labor organization if it is brought to return funds to union members directly. Plaintiffs' Reply, pp. 10- 11. Pignotti dealt with restoring democratic processes to the union after a dispute about whether union funds would be used to funds a pension plan. The Eighth Circuit held that "[t]he restoration of orderly democratic processes to the local union is clearly a benefit to the labor organization, and a proper subject of concern to the entire membership." Id. at 835. Even if the Eighth Circuit had held that a case brought solely for the benefit of union members was cognizable under Section 501, the instant case is factually distinguishable from Pignotti.

Phillips, 403 F.2d at 832. Moreover, the demand letter the individual Plaintiffs sent to IFFA's officers asserts no breach of their fiduciary duties. Plaintiffs' Exhibit 5. That letter demands "an immediate accounting of the current funds and assets of IFFA." Plaintiffs' Exhibit 5. It further demands that no further funds be expended and that the funds be held in trust for the benefit of the TWA flight attendants "pending the outcome of the representation election." Plaintiffs' Exhibit 5. Nowhere in the letter do Plaintiffs allege that Defendants have violated their fiduciary duty to IFFA.

Based on the evidence presented at the hearing on March 11, 1997, and the briefs submitted by the parties, the Court finds that Plaintiffs have failed to demonstrate a probability of success on the merits.

D. Public Interest

Finally, Plaintiffs contend that requiring IFFA's assets to be held in escrow is in the public interest because Congress determined that imposing fiduciary duties upon union officers is in the public interest. Plaintiffs also quote the Senate report on the passage of section 501 for the proposition that union funds belong to the union's members and not to the officers as their private property. Plaintiffs' Post-Hearing Memorandum in Support of Preliminary Injunction, p. 35. Plaintiffs, however, have neither asserted nor proved any attempt by IFFA's officers to convert IFFA's funds to their private use. Defendants, on the other hand, claim that denial

of a preliminary injunction is in the public interest. They assert that requiring IFFA to refrain from making any further expenditures decreases competition among unions, thus thwarting the public interest in promoting competition. The Court finds that Plaintiffs have failed to show that Defendants have appropriated IFFA's funds to their private use. Without a showing that Defendants have violated their fiduciary duties, issuing an injunction would not serve the public interest behind the enactment of Section 501. Therefore, the final preliminary injunction factor also weighs in favor of Defendants.

In accordance with the foregoing,

IT IS HEREBY ORDERED that Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction [docket # 10] is **DENIED**.

Dated this 9th day of April, 1997.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE

APPENDIX D

RELEVANT EVIDENCE

29 U.S. C. § 501
Page 38

RESOLUTION OF IFFA EXECUTIVE BOARD
ADOPTED, FEBRUARY 25, 1997
PAGE 40

IFFA CONSTITUTION AND BYLAWS
PAGE 45

§ 501. Fiduciary responsibility of officers of labor organizations

(a) Duties of officers; exculpatory provisions and resolutions void

The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to the organization and its members as a group. It is, therefore, the duty of each such person, taking onto account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interests which conflicts with the interests of such organization and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

(b) Violation of duties; action by member after refusal or failure by labor organization to commence proceedings; jurisdiction; leave of court; counsel fees and expenses

When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) of this section and the labor organization or its governing board of officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward, or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allow a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

RESOLUTION OF THE EXECUTIVE BOARD
of the
INDEPENDENT FEDERATION OF
FLIGHT ATTENDANTS
97-25

WHEREAS, the Independent Federation of Flight Attendants was formed in 1977, pledging in our Constitution and By-Laws to "labor unitedly to perpetuate our Association on the basis of solidarity and justice, to bring about a higher standard of living. . . . to unite in this Union regardless of sex, age, race, color or national origin, all working men and women employed in the airline industry. To engage in educational, legislative, civic, social welfare, community and other activities, and to establish through collective bargaining just and equitable wage and salary standards, shorter hours of work, improvements in the conditions of employment in the airline industry . . . to advance and safeguard the economic security and social welfare of workers in the airline industry, the Organization, and the free labor movements of the United States; to achieve greater safety for airline employees and the flying public, to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend the cherished traditions of democracy and social and economic justice."; and

WHEREAS, in the course of its representation of flight attendants employed by Trans World Airlines, Inc., and consistent with the aims spelled out in the Constitution and

By-Laws, the Organization has obtained numerous rights and benefits on behalf of the TWA flight attendants, including, but not limited to:

1. Solidifying through litigation the right of employees to engage in concerted activity for their mutual aid and protection;

2. Obtaining past and future payments of money and stock from TWA in settlement of IFFA sponsored litigation;

3. Eliminating through negotiation and litigation working conditions that had amounted to sexual discrimination against flight attendants;

4. Protecting through negotiation, grievances, arbitration and litigation, the jobs of hundreds of wrongfully discharged flight attendants;

5. Obtaining through arbitration future and retroactive pay increases for the flight attendants, and initiating a court action to protect those pay increases;

6. Obtaining through negotiation and settlement a contractual pledge from TWA to restore pay equity for flight attendants; and

WHEREAS, IFFA has sought to fulfill its constitutional pledge to promote the interests of airline employees by testifying before congressional committees and administrative agencies concerned with the airline industry, and intends to continue in such beneficial activities; and

WHEREAS, IFFA retains as its goal representation not only of the employees of TWA, but also of any employees

of United States airline companies who would desire and agree to representation by IFFA; and

WHEREAS, IFFA will continue its past and ongoing efforts to actively organize the unorganized; and

WHEREAS, IFFA has been the subject of a hostile raid by the IAM that may cause IFFA to lose its status as the certified representative of the TWA flight attendants; and

WHEREAS, the flight attendants employed by TWA will retain a right to many of the benefits, settlements, awards and judgments obtained by IFFA on their behalf over the years, regardless of the final result of the IAM raid; and

WHEREAS, the Executive Board has been advised of doubts concerning the standing and\or willingness of the IAM or any organization that might supplant IFFA as the collective bargaining representative of the TWA flight attendants to enforce the rights, benefits, settlements, entitlements and judgments IFFA has obtained on behalf of the TWA flight attendants; and

WHEREAS, IFFA intends to continue to enforce the rights, benefits, settlements, entitlements and judgments that it has obtained on behalf of flight attendants to the full extent that such efforts are consistent with the Railway Labor Act and other state and federal laws governing labor representatives and unincorporated associations; and

WHEREAS, IFFA has initiated or has been named in various other lawsuits which remain pending at this time.

Be it therefore RESOLVED that, in the event the IAM raid results in IFFA's loss of certification by the National

Mediation Board as the bargaining representative for TWA flight attendants:

1. Notwithstanding the setback caused by the IAM raid, IFFA will continue to exist and function pursuant to its Constitution and By-Laws.

2. IFFA will pursue all legal and available means, including but not limited to the institution of litigation, to set aside any NMB certification of any union other than IFFA or a certification by the NMB that no union represents TWA Flight Attendants.

3. IFFA will rebuild the membership base depleted by the IAM raid.

4. IFFA will continue in its efforts to represent TWA flight attendants to the extent permitted by the Railway Labor Act, and other state and federal laws governing labor representatives and unincorporated associations.

5. IFFA will exercise all lawful means to assure that the rights, benefits, settlements, entitlements, and judgments which IFFA has obtained for TWA flight attendants over the years will be enforced.

6. IFFA will continue to seek to organize the unorganized workers of the United States airline industry.

7. IFFA will continue to advocate through legislative and administrative lobbying, publication and other means, the interest of airline employees in safety, in greater standards of living, and in democracy and social and economic justice.

8. IFFA will endeavor to promote membership in

the Organization for all workers employed in the United States airline industry.

9. IFFA will continue to defend the lawsuits in which it has been named as a defendant, and shall continue to seek judicial resolution of those claims it has taken before the courts.

10. IFFA will take all legal and available means to preserve all Organization assets for purposes of fulfilling this Resolution and all other purposes of the Organization.

Adopted by the Executive Board of the Independent Federation of Flight Attendants this 25 day of February 1997.

/s/ Barry Schimmel
Barry Schimmel, Secretary-Treasurer

INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS

CONSTITUTION AND BY-LAWS

As adopted May 12, 1977
and amended
November 28, 1978
and
November 24, 1981
and
May 14, 1983
and
December 21, 1984
and
February 24, 1986
and
October 1, 1988
and
September 20, 1990
and
August 31, 1994

Table of Contents*

PREAMBLE AND STATEMENT OF OBJECTIVES 48
ARTICLE I
NAME, JURISDICTION, AND GOVERNMENT 50
ARTICLE II
MEMBERSHIP 51
ARTICLE III
MEMBERSHIP MEETINGS 53
ARTICLE IV
OFFICERS 54
ARTICLE V
DUTIES OF OFFICERS 55
ARTICLE VI
EXECUTIVE BOARD 60
ARTICLE VII
EXECUTIVE BOARD MEETINGS 61
ARTICLE VIII
ELECTION AND REFERENDUM PROCEDURES ... 62
ARTICLE IX
NOMINATION AND ELECTION OF OFFICERS 65

*The page numbers in this Table of Contents have been altered to reflect the appropriate page numbering in this Appendix.

ARTICLE X
NOMINATION, ELECTION AND DUTIES OF DOMICILE VICE-CHAIRPERSONS AND DOMICILE REPRESENTATIVES 67
ARTICLE XI
FINANCES 70
ARTICLE XII
BUDGET 76
ARTICLE XIII
CONTRACT NEGOTIATING COMMITTEE 78
ARTICLE XIV
STRIKES 79
ARTICLE XV
CONTRACT RATIFICATION 80
ARTICLE XVI
RECALL OF OFFICERS 81
ARTICLE XVII
CHARGES, TRIALS AND PENALTIES 82
ARTICLE XVIII
AFFILIATIONS 89
ARTICLE XIX
AMENDMENTS 90
ARTICLE XX
GENERAL 91

PREAMBLE
AND STATEMENT OF OBJECTIVES

Believing that the right of employees in the commercial aviation industry to enjoy to the full extent the wealth created by their labor and services is a natural right, and realizing that under the changing conditions incident to the enormous growth of the airline industry and aggregations of capital within that industry, it is impossible for those who labor and perform services in that industry to obtain the full reward of their labor and services other than through collective action; and recognizing the fact that those who labor in the airline industry should use their rights of citizenship and self-organization intelligently, through organizations founded and acting along cooperative, economic and democratic lines, with the view of improving the economic, social and professional well-being of themselves and all others who labor and perform services;

NOW, THEREFORE: We, the independent Federation of Flight Attendants, pledge ourselves to labor unitedly to perpetuate our Association on the basis of solidarity and justice, to bring about a higher standard of living, to achieve general adoption of our principles and to obtain the following objectives:

First. To unite in this Union regardless of sex, age,

race, color or national origin, all working men and working women employed in the airline industry and eligible for membership.

Second. To establish through collective bargaining just and equitable wage and salary standards, shorter hours of work and improvements in the conditions of employment in the airline industry.

Third. To engage in educational, legislative, civic, social welfare, community and other activities; to advance and safeguard the economic security and social welfare of Workers in the airline industry, this Organization, and the free labor movements of the United States; to achieve greater safety for airline employees and the flying public, to protect and extend our democratic institutions and civil rights and liberties; and to perpetuate and extend the cherished traditions of democracy and social and economic justice.

Fourth. To function as an autonomous National Union to unify and solidify this Organization and the entire labor movement, and to provide financial and other aid and assistance to labor organizations.

Fifth. To take all steps and actions consistent with the Constitution and By-Laws of this Organization and to implement and carry out the objectives, rights, activities and responsibilities of this Organization.

CONSTITUTION AND BY-LAWS OF THE INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS

ARTICLE I
NAME, JURISDICTION, AND GOVERNMENT

Section 1 -- This Organization shall be known as the Independent Federation of Flight Attendants (IFFA).

Section 2 -- The jurisdiction of this Organization shall be limited to persons employed by airlines based in the United States.

Section 3 -- This Organization shall maintain its headquarters in New York City or such other city as determined by a two-thirds (2/3) vote of the Executive Board.

Section 4 -- All power and authority originates with the membership of this Organization. Election of Officers constitutes delegation of authority and assignment of responsibility by the membership and is subject to qualification or nullification in accordance with procedures described in this Constitution and By-Laws.

Section 5 -- This Organization shall be composed of the following Sections, each consisting of the Domiciles as set forth below:

Section 1	**Section 2**	**Section 3**
New York	Saint Louis	Los Angeles

Sections may be added, amended, consolidated, or deleted by the Executive Board as necessary.

ARTICLE II
MEMBERSHIP

Section 1 -- Only persons employed by airlines having collective bargaining agreements with this Organization or serving as full-time officials of this Organization shall be eligible for membership in this Organization. The right to remain a member in good standing shall be subject to the provisions of this Constitution and By-Laws and otherwise shall be lost only upon termination of employment or upon acceptance of a nonbargaining unit position in the airline. Employment shall not be deemed terminated by discharge for cause unless and until the grievance, if any, in connection with the discharge is finally resolved.

Section 2 -- Any person seeking membership in this Organization shall be required to fill out and sign the official membership application form and agree to abide by the Constitution and By-Laws and stay current in the payment of initiation/readmission fees, dues and assessments uniformly required. The readmission fee shall be identical to the initiation fee of this Organization.

Section 3 -- This Organization shall be the members

exclusive representative for the purpose of collective bargaining in respect to rates of Pay, wages, hours of employment and other conditions of employment, and for the negotiation and execution of contracts with employers covering all such matters including contracts requiring his/her membership or the continuance of his/her membership in this Organization as a condition of his/her employment or continued employment, and contracts requiring the employer to deduct, collect or assist in the collecting from his/her wages any dues, fees, assessments, payable to this Organization as permitted under the Railway Labor Act.

Section 4 -- There shall be no discrimination in this Organization because of sex, age, race, creed, color, or national origin.

Section 5 -- A member may lose his/her good standing by failure to tender dues and initiation fees in accordance with Article XI and/or when found guilty of an offense as specified in Article XVII. Any member who loses his/her good standing shall be ineligible to attend membership meetings, vote in any election or referendum, to be a candidate in any election, hold any elective or appointive position, and shall be deleted from the mailing list of the Organization, unless and until the Executive Board has restored his/her good standing.

ARTICLE III
MEMBERSHIP MEETINGS

Section 1 -- Meetings of this Organization shall be held at least once each quarter on a day and time chosen by the Section Chairperson with the approval of the President. Sections consisting of more than one (1) Domicile shall hold meetings in each such Domicile.

Section 2 -- Notification of the meeting shall be by bulletin board notices and/or flier distribution at each Domicile, normally two weeks prior to the meeting. Such notification shall include the proposed agenda for the meeting.

Section 3 -- membership meetings shall be open to all members in good standing. All members in attendance shall sign the official record as proof of attendance.

ARTICLE IV
OFFICERS

Section 1 -- The officers of this Organization shall be a President, Vice-President, Secretary-Treasurer and Section Chairpersons. In the event that the membership of this Organization includes more than 3,000 employees in a single class and craft other than Flight Attendants, there shall be a Vice-President for Flight Attendants and a Vice President for each

additional class and craft.

Section 2 -- The term of office for the officers shall be three (3) years.

Section 3 -- In the event of a vacancy occurring during term of office of President, the Vice-President of Flight Attendants shall succeed to the office for the remainder of the unexpired term. In the event of a vacancy in the office of the Vice President and/or the office of Secretary-Treasurer of less than 180 days it shall be filled by appointment of the Executive Board. Those vacancies in excess of 180 days shall be filled by a special election of the membership, and if necessary, the Executive Board shall appoint an interim official to serve until (Completion of the special election. In the event of a vacancy occurring during the term of office of a Section Chairperson, the vacancy shall be filled from said Section by a vote of the Executive Board for the remainder of the unexpired term.

Section 4 -- If following an election for any position set forth in this Constitution and By-Laws, there is a vacancy due to the failure of any person to be a candidate for such position, such vacancy shall be filled by appointment of the Executive Board elected in such election.

Section 5 -- No member shall be a candidate for or hold more than one elective office or elective position.

ARTICLE V
DUTIES OF THE OFFICERS

Section 1 -- The President of this Organization shall be a full-time position; shall be paid an annual salary payable monthly to be set by the Executive Board, taking into account all elements of income, benefits and earning potential as specified in all applicable provisions of the collective bargaining agreements negotiated by this Organization, provided, however, that effective January 1, 1984, the President's salary shall be at least fifteen percent (15%) higher than the highest paid full-time representative. The President shall perform his/her principal duties in this Organization's headquarters, unless assigned other duties, on a temporary basis, as determined by the Executive Board; consistent with such requirement, and to insure full freedom to hold office, the Organization shall provide the President a reasonable and sufficient expense allowance for such purposes as hotel/lodging, meals, laundry, automobile/transportation, etc., while in the headquarters area, as determined by the Executive Board. The President's salary shall be supplemented by a retirement trust, group life insurance and group medical plans, paid for from the funds of this Organization to the airline on whose seniority list the President is carried, or an independent insurance firm, not to exceed the highest

amount normally paid under a collective bargaining agreement between an airline and this Organization. Vacation days shall accrue according to the maximum vacation schedule appearing in the applicable collective bargaining agreements and may be taken at the discretion of the President during the term of office or at the end of such term.

The President shall preside at all meetings of the Executive Board and shall represent the Organization at all contract negotiations. The President shall have authority to appoint and remove, employ and discharge, and, with the approval of the Executive Board, fix the compensation of all employees and clerks of this Organization. The President shall see that the books, records and statements are properly kept, made and filed in accordance with the law. The President shall sign all contracts and agreements and all Organization membership cards.

Section 2 -- The Vice-President of this Organization shall be a full-time position. The Vice-President shall assist the President in the discharge of his/ her duties, and during his/her absence shall perform the duties of the President. The Vice President's annual salary shall be set by the Executive Board, provided, however, that effective January 1, 1984, such salary shall be at least ten percent (10%) higher than the highest paid fulltime representative. The Vice-President shall

perform his/her principal duties in this Organization's headquarters unless assigned other duties, on a temporary basis, by the President or Executive Board; consistent with such requirement, and to insure full freedom to seek and hold office, the Organization shall provide the Vice-President a reasonable and sufficient expense allowance for such purposes as hotel/lodging, meals, laundry, automobile/transportation, etc., while in the headquarters area, as determined by the Executive Board. The duties and salary of a Vice-President, established as a result of membership in this Organization by a class and craft in addition to Flight Attendants, shall be full-time and shall be set by the Executive Board consistent with this Constitution and By-Laws and the interests of the membership.

Section 3 -- The Secretary-Treasurer of this Organization shall be a full-time position. The Secretary-Treasurer shall be responsible for, and held directly accountable for the proper discharge of his/her duties. Such duties include: primarily the care and custody of all funds and securities in the name of the Organization; the depositing of all such funds and securities in the name of the Organization in such bank or banks, trust company or trust companies, or safe deposit vaults as the Executive Board may designate; the making, signing and endorsing, in the name of the Organization all checks, drafts, warrants, and orders

for the payment of money, and paying out and disposing of the same and the receipt thereof under the direction of the President or the Executive Board; the exhibiting at all reasonable times his/her books; the rendering of a complete statement of condition of the finances of the Organization at meetings of the Executive Board and at such other times as may be required by the Board or the President, and the making of a, complete financial report monthly, available to all active members in good standing through the Section Chairpersons; the keeping, at the Organization headquarters office, of correct books of account of all Organization business and transactions and such other books of account as the Executive Board may require. Further, the Secretary-Treasurer shall keep accurate minutes of the meetings of the Executive Board; shall give and serve all notices of the Organization; shall be the custodian of the Organization's records and seal; and affix the latter when required. She/He shall cause to be kept the Organization membership records so as to show at all times the number of members under each classification, their names alphabetically arranged, their respective places of residence, mailing address, the time at which each person became a member of the Organization, or changed his/her membership status, and cause to be kept records or files open daily during business hours at the headquarters office,

subject to the inspection of any active member in good standing. He/She shall sign all Organization membership cards. The Secretary-Treasurer shall be paid an annual salary to be set by the Executive Board, provided, however, that effective January 1, 1984, such salary shall be at least five percent (5%) higher than the highest paid full-time representative. The Secretary-Treasurer shall perform his/her principal duties in this Organization's headquarters unless assigned other duties, on a temporary basis, by the President or Executive Board; consistent with such requirement and to insure full freedom to seek and hold office, the Organization shall provide the Secretary-Treasurer a reasonable and sufficient expense allowance for such purposes as hotel/lodging, meals, laundry, automobile/transportation, etc., while in the headquarters area, as determined by the Executive Board.

Section 4 -- The Section Chairpersons shall reside in the vicinity of the Domicile(s)/Section which he/ she represents, shall have the right to investigate and take such action in the Domicile(s) as is necessary for the efficient and democratic operation of the Organization. Each Section Chairperson shall serve on a full-time basis in his/her respective position and in the IFFA office at the location from which elected unless assigned other duties, on a temporary basis, as determined by the President or Executive Board. He/

She shall keep the respective members informed of the action of the Organization, assist as an Executive Board Member in the enforcement of the Constitution and By-Laws, and the collective bargaining agreements, and such other duties as may be assigned to him/her. He/She shall preside at all Section/Domicile(s) meetings. He/She shall have the authority to appoint such members in good standing as he/she may deem necessary to assist him/her in the carrying out of his/her Section/Domicile(s) responsibilities. All such appointments shall become effective only upon approval by the Executive Board.

Section 5 -- In addition to the other duties and responsibilities set forth herein, each officer shall carry out all the duties imposed upon him/her by the Executive Board.

ARTICLE VI
EXECUTIVE BOARD

Section 1 -- The Executive Board of this Organization shall consist of the President, Vice-President(s), Secretary-Treasurer and a Chairperson for each Section designated in Article 1, Section 5 of this Constitution and By-Laws. Domicile Vice-Chairpersons shall not act as Executive Board members.

Section 2 -- The Executive Board shall act in consultation and cooperation with the President in furthering the objectives of this Organization, and shall have the

power and authority to administer the Organization, its general management and business affairs, subject to the provisions of this Constitution and By-Laws.

Section 3 -- The Executive Board shall make a quarterly report of its activities which shall be available to the membership at their regular meetings.

Section 4 -- The Executive Board shall have the authority to fix appropriate compensation for and appoint members or officers in good standing to full-time positions taking into consideration the financial status of the Organization.

Section 5 -- Whenever the President or the Secretary-Treasurer may be required to journey from his/her home base, the Executive Board may designate one of its members as an additional authorized signatory on checks issued against the accounts of this Organization, and, provided such additional signatory is duly bonded, the signatures of any two, from among the President, Secretary-Treasurer and such additional authorized signatory on such checks shall meet the check signatory requirements of this Constitution and By-Laws.

ARTICLE VII
EXECUTIVE BOARD MEETINGS

Section 1 -- The Executive Board shall meet quarterly or at such times that the President determines.

Section 2 -- Emergency meetings of the Executive Board may be called by the President or by a majority of the Executive Board. Whenever possible, a week's notice of such meetings shall be given.

Section 3 -- At all meetings of the Executive Board each member of the Board shall have one vote.

Section 4 -- At all meetings of the Executive Board a majority shall constitute a quorum. A quorum is necessary for the transaction of business. When a quorum is not present, a lesser number of the members in attendance may adjourn the meeting to a future time.

Section 5 -- Notwithstanding the provisions of Article XVI, Executive Board Members are required to attend all Executive Board meetings. Failure of Executive Board Members to attend or be excused from three (3) consecutive meetings shall constitute cause for the Executive Board to declare such office vacant.

ARTICLE VIII
ELECTION AND REFERENDUM PROCEDURES

Section 1 -- The Executive Board shall appoint an Election Committee within ninety (90) days of assuming office. The Election Committee shall conduct all elections provided for in this Constitution in compliance with the rules, regulations policies and procedures as determined by the Executive Board and consistent with applicable Federal Law.

Section 2 -- The Election Committee shall consist of three (3) permanent and two (2) alternate members. Such members shall be active employees of employers having a collective bargaining agreement with this Organization. In the event the membership of this Organization consists of 3,000 or more employees in a class and craft other than Flight Attendants, at least one (1) member shall be from such class and craft. No member of the Election Committee may be a candidate for any elective office or hold any elective office.

Section 3 -- The names of those appointed to the Election Committee shall be provided at regular membership meetings and/or posted on Domicile Bulletin Boards.

Section 4 -- The term of office of the Election Committee shall be three (3) years; it shall begin with the appointment by the Executive Board.

Section 5 -- It shall be the duty and responsibility of the Election Committee to validate a list of members in good standing therefore eligible to participate in an election or referendum.

Section 6 -- The Election Committee shall secure two post office boxes for the purpose of submission of ballots by the eligible members. One box shall be used for receiving official ballots from the eligible members, and the second post office box shall be used for receiving the undeliverable ballots.

Section 7 -- The Election Committee shall mail balloting

material to each member in good standing twenty-one (21) days prior to the closing of the election. The balloting material shall consist of the ballot, an envelope marked with the word "BALLOT" only, a postage paid and addressed return envelope marked with the member's name.

Section 8 -- The Election Committee shall keep a record book which shall contain the minutes of the Election Committee meetings and the official election results.

Section 9 -- All ballots must be received in the post office box by 10:00 a.m. of the closing date of the election.

Section 10 -- All ballots shall be opened and counted by the Election Committee at one committee meeting held at the Organization's headquarters office. The Election Committee shall certify the results to the respective Domiciles.

Section 11 -- Ballots returned in anything other than the official return envelope with the member's name legible shall be disqualified. If more than one ballot is contained in one envelope all ballots contained in that envelope shall be disqualified.

Section 12 -- Write-in votes for individuals not nominated in accordance with the nomination procedures of this Constitution and By-Laws, shall not be counted by the Election Committee. Such write-in vote(s) shall not disqualify votes for properly nominated members appearing on the same ballot.

Section 13 -- Any member in good standing shall have the

right to be in attendance at any proceedings of the Election Committee. Such attendance shall be at the member's own expense.

Section 14 -- All ballots shall be maintained by the Organization for a period of one year.

Section 15 -- If requested by the Election Committee the Executive Board may, at its discretion, designate members in good standing who themselves are not candidates in the election as temporary clerical assistants to the Election Committee.

ARTICLE IX
NOMINATION AND ELECTION OF OFFICERS

Section 1 -- The Election of officers of this Organization, as defined in Article IV, Section 1, shall be held during the month of August. The elected officers shall be installed and take office on October 1.

Section 2 -- Notice of nomination for officers shall be posted on all bulletin boards no later than May 15 of every third year and shall remain posted through August of the same year. Additionally, members will receive notification of nomination and election of officers through the Union's regular newsletter or special publication mailed to the last known address of the member.

Section 3 -- Nominations for President, Vice-President, and Secretary-Treasurer shall be by petition signed by a

minimum of five (5) percent of the members of this Organization in good standing.

Section 4 -- Nominations for Section Chairpersons shall be by official petition signed by five (5) percent of the members in good standing from the respective Section involved.

Section 5 -- Official petitions for nomination shall be available June 1 and must be received in the election committee post office box no later than 10:00 a.m., July 16. Ballots shall be mailed by the Election Committee to each member in good standing no later than August 11.

Section 6 -- A member to be eligible for election to office shall in addition to all other requirements of the Constitution and By-Laws, have been a member of the Organization in good standing for at least twelve (12) consecutive months preceding the nominations.

Section 7 -- The Election committee shall notify each nominee by certified mail of his/her eligibility to become a candidate for office. Within ten (10) days of receipt of this notice, each nominee must notify the Election Committee in writing of his/ her acceptance of the nomination. At the same time, each nominee shall submit a summary of his/her qualifications for the office. These qualifications are to be made part of the "List of Candidates" for each office to be mailed to each member in good standing along with a secret ballot.

Section 8 -- Nominees who are declared ineligible by the Election Committee may make an appeal in writing to the Executive Board within ten (10) days of receipt of the notice of ineligibility. In the event of a dispute the election will proceed as scheduled and the aggrieved member may present his/her appeal in writing to the Executive Board.

Section 9 -- All ballots shall be received in the election committee post office box no later than 10:00 a.m. August 31. Should August 31 fall on a Saturday, Sunday or holiday, the ballots must be received by 10:00 a.m. the first weekday (other than a holiday) following August 31.

Section 10 -- In addition to the procedures contained in this Article, the Executive Board may establish such nomination and election procedures as are consistent with applicable Federal Law.

ARTICLE X
NOMINATION, ELECTION AND DUTIES OF DOMICILE VICE-CHAIRPERSONS AND DOMICILE REPRESENTATIVES

Section 1 -- Each Domicile shall have one (1) Vice Chairperson and three (3) Representatives, who shall be nominated and elected as set forth in this Article.

Section 2 -- The election of Vice-Chairpersons and Representatives shall be held during the month of

August. The elected individuals shall be installed and assume their position on October 1. The term of office for Domicile Vice-Chairpersons and Domicile Representatives shall be three (3) years.

Section 3 -- Notice of nomination for Vice-Chairpersons and Representatives shall be posted on all bulletin boards no later than May 15 of every third year and shall remain posted through August of the same year. Additionally, members will receive notification of Vice-Chairperson and Domicile Representatives elections through the Union's official newsletter or special publication mailed to the last known address of the member.

Section 4 -- Nominations for Vice-Chairpersons and Representatives shall be by official petition signed by a minimum of five (5) percent of the members in good standing from the respective Domicile involved.

Section 5 -- Official petitions for nomination shall be available June 1 and must be received in the election committee post office box no later than 10:00 a.m. July 16. Ballots shall be mailed by the Election Committee to each member in good standing no later than August 11.

Section 6 -- A member to be eligible for election to office shall, in addition to all other requirements of the Constitution and By-Laws, have been a member of the Organization in good standing for at least twelve (12) consecutive months preceding the nominations.

Section 7 -- The Election Committee shall notify each nominee by certified mail of his/her eligibility to become a candidate for office. Within ten (10) days of receipt of this notice, each nominee must notify the Election Committee in writing of his/ her acceptance of the nomination.

Section 8 -- Nominees who are declared ineligible by the Election Committee may make an appeal in writing to the Executive Board within ten (10) days of receipt of the notice of ineligibility. In the event of a dispute the election will proceed as scheduled and the aggrieved member may present his/her appeal in writing to the Executive Board.

Section 9 -- All ballots shall be received in the election committee post office box no later than 10:00 a.m., August 31. Should August 31 fall on a Saturday, Sunday, or holiday, the ballots must be received by 10:00 a.m., the first weekday (other than a holiday) following August 31.

Section 10 -- The Domicile Vice-Chairperson shall reside in the vicinity of the Domicile which he/she represents. He/She shall perform such Domicile duties as may be specifically assigned by the Section Chairperson, and shall preside at Domicile meetings in the absence of the Section Chairperson. In the event of a vacancy occurring during the term of office of a Domicile Vice-Chairperson, the vacancy shall be filled by appointment of the Executive Board.

Section 11 -- Domicile Representatives shall reside in the vicinity of the Domicile which he/she represents. He/She shall perform such Domicile duties as may be specifically assigned by the Section Chairperson. In the event of a vacancy during the term of office of a Domicile Representative, the vacancy shall be filled by appointment by the Executive Board.

Section 12 -- Domicile Vice-Chairperson and Representatives may be removed by the Executive Board for failure to perform assigned duties, for violations of this Constitution and By-Laws, for engaging in conduct unbecoming a member of this Organization, or for other good cause shown.

ARTICLE XI
FINANCES

Section 1 -- The President, Secretary-Treasurer, and such additional officer as may be designated by the Executive Board shall be authorized to sign all checks and shall be bonded in the amount determined by the Executive Board and existing laws. Two signatures will be required on all checks paid by this Organization.

Section 2 -- The financial records of the Organization shall be audited annually by a Certified Public Accounting firm designated by the Executive Board. The audit report shall be mailed to the membership no later than

thirty (30) days after the Executive Board's receipt of the auditor's completed report.

Section 3 -- For the purposes of auditing, bonding and the normal business of this Organization, the Executive Board shall, in accordance with generally accepted business practices and accounting principles, establish an annual fiscal year which may vary according to the needs of the Organization; an annual audit of the Organization's financial records shall be per-formed at least every twelve (12) consecutive months.

Section 4 -- The initiation/readmission fee for this Organization shall be one hundred and twenty-five dollars ($125.00) payable upon joining, but, for new hires in IFFA bargaining unit positions, no later than the sixtieth (60th) day from the date of such employment. All Flight Attendants who have previously paid an initiation fee to this Organization will be exempt from the payment of initiation fees. However, a member who has resigned membership from this Organization shall be required to pay a readmission fee to this Organization to re-establish membership. Failure to make timely initiation/readmission fee payment will result in the denial of membership in good standing. A member who authorizes the payment of his/her initiation fee by means of dues check-off shall not be considered in bad standing provided such authorization is received by the Secretary-Treasurer on or before the sixtieth

(60th) day from the date of employment, regardless of when the initiation fee is deducted from his/her wages. A member may elect to pay the one hundred and twenty-five dollar ($125.00) initiation fee in Five (5) equal monthly installments of twenty-five dollars ($25.00) each; such member shall not be considered in bad standing provided that such member either (a) makes required installment payments, timely and in full, by execution of a check-off authorization in the manner and within the time specified herein above, or (b) by means other than check-off authorization, makes required payments, timely and in full, commencing with a first payment within the time specified herein above and four (4) equal payments no later than the twenty eighth (28th) day of each calendar month thereafter.

Section 5(a) -- (1) The monthly dues of members of this Organization employed as Flight Attendants shall be based upon the hourly rate of the highest seniority Domestic Cabin Attendant classification in effect as of January 1 of each year.

Effective October, 1994, the monthly dues shall be equal to 1.325 of the applicable rates, in effect as of January 1, 1994, as specified in the preceding paragraph, rounded up to the next highest dollar; effective January 1, 1995, and each January I thereafter, the monthly dues shall be equal to 1.325 of

such applicable rate, rounded up to the next highest dollar, in effect as of that date. In no event shall any member's dues increase by more than six dollars (56.00) per month in any single year due to salary increases in the preceding year. In no event shall dues be less than thirty-four dollars ($34.00).

Dues payments must be received by the Secretary-Treasurer by the twenty-eighth (28th) day of each calendar month as defined in Article II of the Working Agreement. Failure to make timely dues payment will result in the member losing his/her good standing. Good standing may be restored by the Executive Board upon payment of all outstanding dues.

(2) Notwithstanding any other provision of this Article XI, Section 5(a), the monthly dues of members of this Organization employed as Flight Attendants with pay seniority of less than one full year (12 months) shall, effective October, 1994 and thereafter, be based upon and equal to the highest published hourly rate of a first-year seniority Domestic Cabin Attendant classification in effect as of January 1 of each year multiplied by the multiplier-rate (e.g. 1.325) then applicable to other members of this Organization employed as Flight Attendants. In no event shall any such member's dues increase by more than six dollars

($6.00) per month in any single year due to salary increases in the preceding year. In no event shall the monthly dues of such members with less than one full year (12 months) of pay seniority be less than nineteen dollars ($19.00). Timing of dues payments and penalties for nonpayment shall be in accordance with the above provisions of this Article XI, Section 5(a)(1).

Section 5(b) -- The monthly dues of members of this Organization employed other than as Flight Attendants shall be an amount equal to two (2) hours of straight-time pay, rounded to the next highest dollar, or the highest paid job category or classification within the class and craft. Such amount shall be first established on the effective date of the first collective bargaining agreement covering such class and craft and shall thereafter be adjusted on January 1 of each year in accordance with such pay rates then in effect. In no event shall such amount be less than twenty-one dollars ($21.00).

Section 6 -- Members who, on or after January 1, 1985, commence a furlough or leave of absence (except Union leave of absence) during which such member remains on the seniority list under agreement between this Organization and an airline, must pay his/her monthly dues for each full month in which he/she is on such seniority list in such inactive status, to a maximum of twelve (12) months for each

uninterrupted period on such inactive status; provided that dues owed for entire month(s) while the member is absent from duty as specified above must be paid in full no later than the month when such member first receives pay from the airline for active duty following return from such absence.

Section 7 -- Any increase in the amount of dues [in excess of the amount specified in Section 5 of this Article] shall be accomplished by a secret ballot referendum vote of the membership.

Section 8 -- Any officer or member of this Organization shall be compensated for all lost pay and credit hours while performing business for the Organization, provided such time is authorized by the President or Executive Board.

Section 9 -- The monthly financial report shall be available at the regular Domicile(s) membership meetings.

Section 10 -- Assessments may not be levied without a special referendum for such purpose. Such referendum shall be by secret ballot as set forth in Article VIII, Sections 5 through 15 and will not be considered passed unless a majority of those voting vote in the affirmative.

Section 11 -- The funds and property of this Organization shall be managed, invested, expended, or otherwise used to implement and carry out the objects, rights, activities and responsibilities of the Organization, and to administer the affairs of the Organization, in

accordance with this Constitution and By-Laws and policies of the Organization.

Real estate for office space, loans and equipment necessary to carry out the objects, rights, activities and responsibilities of the Organization may be obtained, acquired, held, leased, mortgaged, disposed of, and otherwise dealt with by the Executive Board in the names of the President and such other members of the Executive Board as required, and their successors in office. Any individual liability upon the President or member(s) of the Executive Board in connection with the faithful performance of the foregoing shall be assumed and accepted by the Organization.

Section 12 -- The Executive Board shall have the authority to grant special dispensation to waive initiation fees and/or to reduce dues in newly organized bargaining units for a period of time, but not to exceed the duration of the first negotiated collective bargaining agreement, or eighteen (18) months following the execution of the first negotiated collective bargaining agreement, whichever occurs first.

ARTICLE XII
BUDGET

Section 1 -- The Executive Board shall, at the meeting following their installation or at such other times as

may be deemed necessary, adopt a budget for the term of office of said Executive Board, and the respective officers of this Organization shall be guided by such budget in conducting the affairs of the Organization.

Section 2 -- The Executive Board shall have the power to approve and provide for payment of expenses of the Organization which are necessary to the operation of the Organization.

Section 3 -- The following ongoing expenditures initially authorized by the Executive Board shall be deemed routine items payable by check properly signed in accordance with the provisions of these By-Laws, without further approval of the Executive Board: pay loss, insurance payments covering full-time officers and Executive Board members or other full-time representatives, salaries of office employees, salaries of full-time officers and/or full-time representatives, reimbursement of legitimate expenses, refunds of dues or initiation fees, office rent and electricity including meeting hall rents and related expenses, telephone and telegraph, postage and mailing, stationery, office supplies and printing, purchase of office equipment, auditing service payments to Certified Public Accountants, arbitration fees and legal fees, and Union publications.

ARTICLE XIII
CONTRACT NEGOTIATING COMMITTEE

Section 1 -- The Negotiating Committee shall consist of five (5) members, as follows:

(a) -- The President of the Organization, who shall act as chairperson of the committee; and,

(b) -- Four (4) members or officers in good standing appointed by the Executive Board, two (2) of which shall be from the domestic division, and two (2) of which shall be from the international division. Notwithstanding the above, in the negotiation of a collective bargaining agreement covering only members of a class and craft exclusive of Flight Attendants, the Negotiating Committee shall consist of the President and four members or officers appointed by the Executive Board, at least two of whom shall be members of such class and craft.

Section 2 -- Except for voluntary resignation or loss of membership in good standing, members of the Negotiating Committee shall continue in their respective capacities on said Committee until the collective bargaining agreement has been ratified pursuant to Article XV, except that, upon recommendation of a majority of the Negotiating Committee, the Executive Board may remove any

member of said committee appointed pursuant to Section 1 (b) for good cause. There shall be no appeal from or review of such removal from the Negotiating Committee.

ARTICLE XIV
STRIKES

Section 1 -- No strike shall take place without membership authorization by secret ballot. A strike will be considered authorized if a majority of those voting vote in the affirmative. Only those members covered by the collective bargaining agreement in dispute shall be eligible to vote.

Section 2 -- Strike authorization shall empower the Executive Board to call a strike in accordance with the Railway Labor Act.

Section 3 -- Once a strike has commenced it can be called off only by the Executive Board.

Section 4 -- Any member who fails to support a strike actively engaged in by the Organization by refusing to perform picket duty shall be considered as engaging in conduct unbecoming a member of this Organization. The provisions of Article XVII, Section 16, notwithstanding, a fine in the amount of a day's pay at the applicable rates for each day the member was obligated to picket and failed to do so shall not be considered unreasonable or excessive.

Section 5 -- Any member who crosses a picket line recognized by this Organization as a valid strike picket line shall be considered as engaging in conduct unbecoming a member of this Organization, and shall forfeit his/her status as a member in good standing. Where such member earns wages which stem from crossing such picket line, a fine in the amount of the wages so earned shall not be considered unreasonable or excessive, the provisions of Article XVII, Section 16 notwithstanding.

ARTICLE XV
CONTRACT RATIFICATION

Section 1 -- All proposed collective bargaining agreements shall be subject to membership ratification. Only those members covered by the proposed collective bargaining agreement shall be eligible to vote concerning such ratification.

Section 2 -- No proposed collective bargaining agreement shall be submitted for a ratification vote unless a majority of the members of the Negotiating Committee first authorize the submission of the proposed agreement to the membership for a ratification vote. Such ratification vote may be accompanied by a recommendation of the Executive Board; the Executive Board may determine the proposed agreement be submitted with a

recommendation of acceptance, a recommendation of rejection, or no recommendation at all. Ratification shall be conducted as follows:

(a) -- Prior to Strike-by secret mail ballot referendum;

(b) -- During a Strike-by a secret ballot at Domicile(s) membership meetings.

Section 3 -- Ratification as in 2 (a) above shall be by a secret ballot as set forth in Article VIII, Sections 5 through 15 except that time limitations contained therein may be reduced or extended as deemed necessary by the Executive Board.

Section 4 -- A proposed agreement will not be considered ratified unless a majority *of* those voting vote in the affirmative.

ARTICLE XVI
RECALL OF OFFICERS

Section 1 -- Upon receipt of a written petition seeking the recall and the removal of an officer, signed by one-third of the members in good standing of the Organization or respective Section, the Secretary-Treasurer shall issue a call for a special referendum commencing no less than fifteen (15) days nor more than thirty (30) days after receipt of such petition. In the event that a majority of the members of the

Organization or respective Section vote for the recall and removal of an officer, his/her office shall he declared vacant.

Section 2 -- The Executive Board may suspend an officer for breach of trust or for failure to perform the duties of his/her office is set forth in the Constitution and By-Laws. The Secretary-Treasurer upon receipt of written notification from the Executive Board of such suspension shall initiate a recall referendum proceeding in accordance with Section 1 of this Article. If the membership vote does not sustain the recall, the officer will be reinstated to his/her office.

Section 3 -- All referendums under this Article shall be conducted by secret ballot as set forth in Article VIII, Sections 5 through 15.

Section 4 -- An officer removed pursuant to the provisions of this Article shall have no right of appeal except as to the procedure.

ARTICLE XVII
CHARGES, TRIALS AND PENALTIES

Section 1 -- The Executive Board shall appoint from among the general membership within ninety (90) days of their installation to office three (3) members and two (2) alternate members to sit on a Trial Committee for this Organization. Their terms of office shall be for three (3) years from the date of appointment.

Members of the Executive Board and members of the Appeal Board are excluded from membership on the Trial Committee. This Trial Committee shall sit for all cases which may arise. Any member of the Trial Committee involved in the charges shall remove him/herself from said Trial Committee. In the instance of such removal of a member of the Trial Committee, the Executive Board shall appoint an alternate member to said Trial Committee.

Section 2 -- The Executive Board shall appoint from among the general membership, within ninety (90) days of their installation to office three (3) members and two (2) alternate members to sit on an Appeal Board for this Organization. Their terms of office shall be for three (3) years from the date of appointment. Members of the Executive Board and members of the Trial Committee are excluded from membership on the Appeal Board. Any member of the Appeal Board involved in the charges shall remove him/herself from said Appeal Board in the instance of such removal of a member of the Appeal Board, the Executive Board shall appoint an alternate member to said Appeal Board.

Section 3 -- A charge by a member or members in good standing that a member or members have violated this Constitution and By-Laws or engaged in conduct unbecoming a member of the Organization must be specifically set forth in writing and signed by the

member or members making the charge. The charge must state the exact nature of the alleged offense, the time and place of the occurrence, the particular provision(s) of the Constitution and By-Laws that have been violated, and any further details to enable the charged member to know what he/she is charged with so that a proper defense may be prepared. Two or more members may be jointly charged with having participated in the same act or acts charged as an offense or with having acted jointly in commission of such an offense and may be jointly tried.

Section 4 -- Those offenses which shall be considered the basis for charges against a member or an officer, for which he/she shall stand trial, shall among other things consist of the following:

1. Violation of any specific provision of the Constitution and By-Laws, or working rule of the Organization, or any collective bargaining agreement to the detriment of the welfare of the Organization or its membership;

2. Acting in collusion with management to the detriment of the welfare of the Organization or its membership;

3. Cross disloyalty, breach of trust, or conduct unbecoming a member;

4. If an officer, gross inefficiency which shall hinder and impair the interests of the Organization;

5. Misappropriation of funds;

6. Secession, or fostering the same;

7. Disobedience to the regulations, rules, mandates and decrees of the Organization; and for such other acts and conduct which shall be considered inconsistent with the duties, obligations and loyalties of a member of a trade union, and for violation of sound trade union principles.

Section 5 -- Charges must be submitted to the Secretary-Treasurer within thirty (30) days of the alleged offense.

Section 6 -- Upon charges being submitted, it is mandatory that a trial be held unless the charges are withdrawn pursuant to Section 9 of this Article or considered by the Executive Board to be improper under this Article. Prior to the notification to a member(s) that charges have been filed against him/her, the Executive Board shall review the charges and consider them improper if:

(1) The charges do not state the exact nature of the alleged offense as required by Section 3 of this Article;

(2) The charges are untimely under Section 5 of this Article;

(3) The act complained of does not sustain a charge of a violation of the Constitution and ByLaws or conduct unbecoming a member of the Organization.

If pursuant to the above, the charges are deemed

improper, the charging member shall be so notified in writing. The decision of the Executive Board shall be final and binding.

Section 7 -- The charged member or members shall be notified by certified mail by the Secretary-Treasurer of the charge or charges, and in the same notice, the charged member or members shall be advised of the date of trial which shall not be earlier than ten (10) days, nor later than thirty (30) days from receipt of delivery of the charges. He/She or they, shall then appear for trial with or without witnesses to answer charges preferred. The charged member may have a member of the Organization in good standing represent him/her if so desired. The charges shall be mailed to the address as the same appears in the records of the Organization and proof of delivery to such address shall constitute receipt of notice of charge.

Section 8 -- Any member bringing charges against another member shall be required to appear in person to substantiate the charges, and to produce such witnesses as are available.

Section 9 -- Once a charged member or members is notified of the charge(s) under Section 7 of this Article, such charge cannot be withdrawn without the consent of the Executive Board.

Section 10 -- A member under charges must be considered innocent until found guilty.

Section 11 -- No member shall bring charges with malice aforethought which he/she knows are not founded on actual facts.

Section 12 -- Any member who shall (except in the case of substantiated illness) fail to appear before any legally appointed committee, when properly notified to do so, as a witness, may upon conviction, be found guilty of contempt, and fined ten dollars ($10.00) for the first offense, and amount of such fine to be doubled for each subsequent failure to appear.

Section 13 -- The Trial Committee shall have full power to call for papers and witnesses on behalf of both the charged and charging member(s), cause members accused of violating the laws of the Organization to appear before it for trial and impose such fines and penalties as provided for in this Constitution and By-Laws.

Section 14 -- No evidence shall be received or considered by the Trial Committee except such as shall be offered at the regular meeting of the Committee at which all parties interested shall be or shall have been notified to be present.

Section 15 -- The Trial Committee shall, after full trial, find the accused member guilty or not guilty of the specific charge(s); the majority of the Trial Committee shall be required for decision. If the accused, be found guilty, the Trial Committee shall in writing recommend within seven (7) days the penalty to the Executive

Board for review and the Executive Board shall determine the penalty. The Secretary-Treasurer shall notify such member(s) of the decision and penalty within ten (10) days of the determination of the penalty.

Section 16 -- Any violation of any provision of this Constitution and By-Laws shall be punishable by fine of not less than ten dollars (510.00) nor more than one hundred dollars ($100.00) or by reprimand or loss of good standing in the discretion of the Executive Board, bearing in mind the facts and circumstances of the particular violation.

Section 17 -- The Secretary-Treasurer shall keep a full and clear record of the trial and its proceedings. These records shall be kept on file by the Secretary-Treasurer.

Section 18 -- Nothing herein contained shall interfere with the appeal rights of the accused. There shall be, however, no right of an accuser to appeal an acquittal or any other decision of the Trial Committee.

Section 19 -- A member who has been found guilty by the Trial Committee may within ten (10) days after receipt of written notice by the Secretary-Treasurer of said conviction, appeal said conviction in writing to the Secretary-Treasurer for review by the Appeal Board.

Section 20 -- The Appeal Board shall meet not later than sixty (60) days from receipt of the written request for such

review. The Appeal Board may affirm, override, or modify the decision of the Trial Committee. Review must be completed and the Executive Board advised of the decision of the Appeal Board in writing within fifteen (15) days. The Executive Board will then direct the Secretary-Treasurer to notify the member of the decision of the Appeal Board in writing within fifteen (15) days.

Section 21 -- All decisions and penalties rendered under this Article must be complied with and carried out and all fines must be paid to the Secretary-Treasurer within ten (10) days after receipt of written notification (notice to be by certified mail). Failure to pay fines will result 'in loss of good standing in the Organization. Good standing shall not be restored until she/he has paid all outstanding dues, assessments and fines.

Section 22 -- Good standing may he restored to a member by the Executive Board after due consideration of all the facts and circumstances of the particular case at some future date, but not without compliance with the provisions of Section 21 of this article.

ARTICLE XVIII
AFFILIATIONS

Section 1 -- The Independent Federation of Flight Attendants may not affiliate with any other Labor Organization

unless and until a special referendum is submitted to the membership in accordance with Article VIII, Sections 5 through 15.

Section 2 -- No referendum under this Article shall be considered passed unless a majority of those voting, vote in the affirmative.

Section 3 -- Notwithstanding the provisions of the foregoing sections of this Article, this Organization, by and through the Executive Board, may associate with other Organizations representing Flight Attendants and/or other employees, and contribute to such associations in areas of common cause and concern to Flight Attendants in particular or employees in general, including, but not limited to, legislation, safety and health, and mutual aid and advancement.

ARTICLE XIX
AMENDMENTS

Section 1 -- The Executive Board shall appoint three (3) members of the Executive Board to review the Constitution and By-Laws of this Organization and any proposed amendments submitted to the Board by the membership and report their recommendations to the Executive Board annually.

Section 2 -- Amendments to the Constitution and By-Laws shall be voted upon by the membership by secret ballot in a referendum election. The ballot is to be

prepared by the Executive Board and submitted to the membership in accordance with Article VIII Sections 5 through 15. To pass an amendment to this Constitution and By-Laws a majority of those members voting must vote in the affirmative.

ARTICLE XX
GENERAL

Section 1 -- It will be the responsibility of each member to keep his/her current address on file by notifying the headquarters office of this Organization, in writing, of any change of address. The Organization shall not be responsible for mail which is undeliverable as a result of the members' failure to keep their current address on file.

Section 2 -- All announcements appearing on the pages of the official independent Federation of Flight Attendants Union publication shall be considered due and proper notice.

Section 3 -- It is the responsibility of each member to read and understand the Constitution and By-Laws as they will be strictly enforced. Ignorance of this Constitution and By-Laws will not be considered a proper excuse for any violation of the provisions contained herein.

Section 4 -- Questions of interpretation of these Constitution and By-Laws shall be determined by the By-Laws

Committee referred to in Article XIX, Section 1 of this Constitution and By-Laws.

Section 5 -- Should any part, provision, section, or Article of this Constitution and By-Laws be rendered or declared invalid by reason of any existing or subsequently enacted legislation or by any final decree of a court of competent jurisdiction, such invalidation of such part, provision, section, or Article of this Constitution and By-Laws shall not invalidate any remaining portions, which shall continue in full force and effect.

Section 6 -- Associate membership in this Organization shall be available to any former Flight Attendant of this Organization whose employment by an airline having a collective bargaining agreement with this Organization has been permanently severed by reason of retirement, resignation or other termination. As a condition of associate membership, such person shall pay associate membership dues for each calendar year in an amount equal to twenty-five dollars ($25.00). Associate members shall receive the official Union publication, shall be entitled to attend Organization meetings and Organization-sponsored social events; provided, however, that associate members may not vote in Union elections or referendums, seek or hold office or serve on official Union committees. Notwithstanding the above, associate members may be appointed by the Executive Board as members emeritus of Union committees, so long as such

associate members are in addition to the full number of committee members required by this Constitution and By-Laws. The Executive Board may withhold or withdraw associate membership from any person who has engaged, or is engaging, in conduct or activities inconsistent with the principles and purposes of this Organization or detrimental to the interests of the members of this Organization

IF, AND AT SUCH TIME AS, THE TOTAL NUMBER OF AIRLINE EMPLOYEES REPRESENTED BY THE INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS INCREASES SO AS TO INCLUDE TEN THOUSAND (10,000) OR MORE AIRLINE EMPLOYEES EMPLOYED BY AT LEAST TWO (2) AIRLINES, THE CONSTITUTION AND BY-LAWS OF THE INDEPENDENT FEDERATION OF FLIGHT ATTENDANTS AS ORIGINALLY ADOPTED MAY 12, 1977, AND FROM TIME TO TIME THEREAFTER AMENDED, SHALL BECOME NULL AND VOID AND OF NO FORCE AND EFFECT. AT SUCH TIME, THE NAME OF THE ORGANIZATION SHALL BE THE INTERNATIONAL FEDERATION OF FLIGHT ATTENDANTS AND THE CONSTITUTION AND BY-LAWS OF THE ORGANIZATION SHALL BE AS ADOPTED, AND THEREAFTER AMENDED, BY THE IFFA MEMBERSHIP ON MAY 14, 1983.

Supreme Court, U.S.
FILED
JUN 2 1998

No. 97-1783

IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

BARRY SCHIMMEL, *et al.*,
Petitioners,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court below correctly held that the officers of a labor organization, that no longer represents any employees nor administers any collective bargaining agreements, may not, consistent with their fiduciary obligations under Section 501 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 501, retain dues monies paid by the formerly-represented employees, where the union's constitution is silent as to the disposition of those funds.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
A. Preliminary Statement	1
B. Factual Background	3
REASONS FOR DENYING THE WRIT	8
CONCLUSION	14

TABLE OF AUTHORITIES

Cases	Page
Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968)	11-12
Sabolsky v. Budzanoski, 457 F.2d 1245 (3d Cir. 1972)	11
Statutes	
Labor-Management Reporting and Disclosure Act,	
29 U.S.C. § 501(a)	8, 9
29 U.S.C. § 501(b)	8
Legislative History	
H.R. Rep. No. 86-741 (1959), *reprinted in* 1959 U.S.C.C.A.N. 2318	9

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BRIEF FOR RESPONDENTS IN OPPOSITION

STATEMENT OF THE CASE

A. Preliminary Statement

This case arises under Section 501 of the Labor-Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. § 501, which imposes strict fiduciary duties upon union officials with respect to their members and to union funds and assets. At issue in this case is whether the five union officer petitioners may retain control over union members' dues monies following the union's loss of its sole collective bargaining certification. The union's constitution is silent on the proper disposition of the dues monies in the event of decertification. Nevertheless,

petitioners insist they are entitled to expend those funds on purposes that do not advance the formerly-represented employees' interests.

In February 1997, in a representation election conducted by the National Mediation Board ("NMB"), the flight attendants of Trans World Airlines ("TWA") voted overwhelmingly in favor of the International Association of Machinists and Aerospace Workers, AFL-CIO ("IAM") to be their new collective bargaining representative. As a result, the NMB certified the IAM to replace the Independent Federation of Flight Attendants ("IFFA") as the collective bargaining representative of the TWA flight attendants. Following the change in representation, IFFA no longer represented any employees nor administered any collective bargaining agreements.

The respondents are the IAM and eight TWA flight attendant members of IFFA who became concerned that the IFFA Executive Board members would spend for their own purposes the dues monies paid by the TWA flight attendants if IFFA lost the representation election. The eight individual respondents are Claudia Davey, John Desmond, Robert Dionne, Kit Furness, Tamara Pierro, Pamela Pinard, Jill Radel, and Nina Rensenhouse. Petitioners are five IFFA officers who, in anticipation of losing the representation election, met secretly and voted to improperly restructure the union, retain all of the dues monies, and indemnify themselves for any potential liability in connection with this and other actions. Petitioners are Barry Schimmel, Flip Becker, Sheila McCann, Terry Fitzgerald, and Jerry Giustiniani.

Petitioners claim they intend to spend the dues monies in accordance with IFFA's constitution and by-laws. It bears emphasis though that the IFFA constitution, unlike most union constitutions, actually is silent as to the disposition of union funds following decertification. Indeed, rather than following the constitution, immediately prior to losing the election petitioners hastily adopted new "in-

terpretations" of the constitution and by-laws so that they could continue to expend funds to perpetuate their union offices.

After IFFA lost its right to represent the TWA flight attendants, the IAM and the individual respondents brought this action seeking an accounting of IFFA's funds and assets pursuant to Section 501 of the LMRDA. They further sought to have those funds and assets transferred to the IAM, as trustee, to be used on behalf of the TWA flight attendants or returned on a pro rata basis to those flight attendants.

B. Factual Background

IFFA was the collective bargaining representative for the TWA flight attendants from 1977 through March 6, 1997. The TWA flight attendants were the only employees IFFA represented and IFFA's only source of union dues. Appendix to the Petition for Writ of Certiorari ("Pet. App.") 8.

In August 1996, Sherry Cooper, the then President of IFFA, negotiated a tentative agreement for a merger between IFFA and the IAM. On October 16, the IFFA Executive Board rejected a motion that the merger proposal be submitted to the IFFA membership for ratification. Joint Appendix in the Court of Appeals for the Eighth Circuit ("J.A.") 266, 270.

Thereafter, the IAM engaged in an organizing campaign among the TWA flight attendants. The IAM obtained authorization cards from a substantial majority of the TWA flight attendants and petitioned the NMB for a representation election. The NMB ordered an election by mail ballot to commence on January 22, 1997 and scheduled a vote count for February 27, 1997. J.A. 413-14; Pet. App. 8-9.

On February 13, 1997, during an IFFA Executive Board conference call, IFFA officer petitioners passed a

resolution excluding then IFFA President Ralph Miller from Executive Board discussions concerning "the IAM raid, IFFA's defense and related matters." J.A. 358. Mr. Miller was absent from this conference call. This resolution was passed in direct contravention of Article V, Section 1 of the IFFA Constitution and Bylaws, which requires that the President preside at all Executive Board meetings. Mr. Miller was never advised that this resolution was passed. J.A. 274-77, 357-58; Pet. App. 55-56.

On February 20, 1997, during an Executive Board conference call conducted despite President Miller's unavailability, IFFA officer petitioners removed President Miller from the Constitution and By-Laws Committee and substituted petitioner Flip Becker in his place. Mr. Miller was never advised of this action. J.A. 277-78, 365-66.

On February 21, 1997, IFFA member respondents, Claudia Davey, John Desmond, Robert Dionne, Tamara Pierro, Pamela Pinard, Jill Radel, and Nina Rensenhouse, sent a letter to IFFA's Executive Board demanding an immediate accounting of the funds and assets of IFFA pursuant to Section 501 of the LMRDA. They further demanded that no additional funds or assets be expended and that such assets be held in trust for the benefit of the TWA flight attendants pending the outcome of the representation election. By letter dated March 1, 1997, respondent Kit Furness, also a TWA flight attendant and IFFA member, made an identical demand. Pet. App. 9-10.

On February 21, 1997, petitioner Barry Schimmel, IFFA's Secretary-Treasurer, advised President Miller that an Executive Board meeting would be held in St. Louis on February 25, but that Mr. Miller would not be permitted to attend. J.A. 276-77.

On February 25, President Miller sent a letter to Mr. Schimmel directing him to fully comply with the request of the individual respondents for an accounting and safe-

guarding of IFFA's assets. Instead, on that same day, IFFA notified the individual respondents that it would not process their request for an accounting unless they provided information regarding a specific breach of fiduciary duty. J.A. 208, 346; Pet. App. 10.

On February 25, 1997, the IFFA officer petitioners convened an Executive Board meeting in St. Louis, without the participation of President Miller. The petitioners passed twenty-seven resolutions that day, including resolutions adopting the "interpretations" of the Constitution and By-Laws Committee. J.A. 209-10.

Specifically, petitioners passed a resolution changing the purposes of IFFA to insure their own survival as union officers. In light of the fact that IFFA would no longer have any collective bargaining or grievance handling responsibilities if it lost the representation election, petitioners adopted a new principal purpose for IFFA: organizing other airline employees. Then, in a further effort to retain their own offices, petitioners adopted an "interpretation" that radically altered the definition of "membership" so that it would include, for the first time, persons who no longer worked under an IFFA agreement and part-time union officials. J.A. 370, 377-78; Pet. App. 40-44.

At the February 25 meeting, petitioners also voted to pay themselves for unused vacation time, to indemnify themselves for any losses incurred in connection with ongoing litigation, and to expend funds to organize the flight attendants employed by Continental Airlines. J.A. 369, 371, 385, 387; Pet. App. 10.

On February 27, 1997, the ballots in the representation election were counted. The IAM won the election by an overwhelming majority. Of the 5,139 flight attendants eligible to vote, 2,886 flight attendants voted for the IAM, 1,078 flight attendants voted for IFFA, and 657 flight attendants voted for other representation. The day after the election, petitioner Barry Schimmel transferred at least

$700,000 of IFFA funds into new accounts. That same day, IFFA instituted a civil action against respondents IAM and the individual IFFA members and sought an order enjoining them from initiating any legal proceeding to obtain an accounting and from filing a legal action in this case. Pet. App. 10-11, 11 n.4.

On March 3, 1997, the IAM and the eight individual respondents requested leave to file an action against the petitioners in the United States District Court for the Eastern District of Missouri, alleging that they had breached their fiduciary duties as union officers in violation of Section 501 of the LMRDA. Respondents further requested that the court issue a temporary restraining order and a preliminary injunction. Pet. App. 22.

On March 6, 1997, the NMB certified the IAM as the exclusive collective bargaining representative of the TWA flight attendants. Pet. App. 12.

The Honorable Judge Jean C. Hamilton held a hearing on respondents' motion for a preliminary injunction on March 11, 1997. On April 9, 1997, Judge Hamilton issued a memorandum and order denying respondents' request for preliminary injunctive relief. The district court held that the IAM did not have standing under the LMRDA to sue IFFA. The district court further found that, for the purposes of the preliminary injunction, the IFFA member respondents had standing but they were not entitled to preliminary injunctive relief. Pet. App. 23, 26-37.

Respondents IAM and the individual IFFA members appealed the district court's denial of preliminary injunctive relief to the United States Court of Appeals for the Eighth Circuit. The Court of Appeals, in a unanimous opinion, reversed the district court's decision. The Eighth Circuit held that the individual respondents were entitled to a preliminary injunction and, therefore, did not address the issue of whether or not the IAM had standing to sue under the LMRDA. Pet. App. 12.

The Court of Appeals found, as a matter of law, that in the absence of a constitutional provision providing for the disposition of union funds upon the loss of IFFA's sole certification, Section 501 precluded petitioners from retaining the flight attendants' dues monies. The Court of Appeals also reversed the district court's legal conclusion that individual respondents could not prevail on their Section 501 claim because it was based upon a breach of duty owed to the membership as a whole, rather than IFFA. Pet. App. 13-15.

More specifically, the Eighth Circuit found that the individual respondents had alleged a specific breach of fiduciary duty in their demand letter. Unlike most other unions, IFFA had not provided in its constitution for the disposition of union funds in the event of a decertification. Given that no such provision existed, petitioners could not, consistent with their fiduciary duties under Section 501, retain the dues monies paid by the TWA flight attendants and use those funds for purposes which did not advance the flight attendants' interests. The Court of Appeals read the individual respondents' demand letter as charging petitioners with a breach of their fiduciary duty to preserve and use the dues monies solely for the TWA flight attendants. Pet. App. 13-14.

Additionally, the Court of Appeals below found that there was a likelihood of success on the merits of the individual respondents' Section 501 claims. The Eighth Circuit specifically reversed the district court's legal holding that the individual respondents could not prevail on their claims because they had not brought suit on behalf of the union. Noting that the individual respondents had brought suit for the benefit of the membership as a whole, the Court of Appeals held that in this unique case, where a union's members are a single group of employees who work for the same employer, the interests of those members are indistinguishable from the interests of the union. Pet. App. 15-16.

Having found a likelihood of success on the merits, the balance of equities required preliminary injunctive relief to insure that flight attendant dues monies were not expended on matters that did not advance the flight attendants' interests, including organizing of other flight attendant groups. Pet. App. 16-18.

The Court of Appeals reversed the district court's decision and remanded the case for a determination of the amount of funds IFFA needed to complete its representation and a determination of the amount of funds that were not derived from dues monies, which IFFA was entitled to keep. All remaining dues monies were to be transferred to the IAM, as trustee only, for distribution to the TWA flight attendants. Pet. App. 19.

REASONS FOR DENYING THE WRIT

1. The Court of Appeals below properly held that the individual IFFA member respondents stated a claim pursuant to Section 501 because they alleged that petitioners breached a duty owed to IFFA's membership. The Eighth Circuit's holding in this regard is fully supported by the express language and legislative history of Section 501.

Section 501(a) of the LMRDA imposes a fiduciary duty upon union officers that is owed to both the union *and its members.* Section 501(a) states "[t]he officers . . . of a labor organization occupy positions of trust in relation to such organization *and its members as a group.* It is, therefore, the duty of each such person . . . to hold its [the union's] money and property solely for the benefit of the organization *and its members.* . . ." 29 U.S.C. § 501 (a) (emphasis added). If a union officer breaches his or her fiduciary duty, Section 501(b) provides union members with a remedy to recover for the breach. A union member may institute a civil action to "recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization." 29 U.S.C. § 501(b).

Congress' intent to impose a fiduciary duty upon union officers, that is owed to the union members, is fully demonstrated in House Report No. 741. House Report No. 741 states, "[t]he members of a labor organization are the real owners of the money and property of such organizations and are entitled to a full accounting of all transactions involving such money and property." H.R. Rep. No. 86-741, at 7 (1959), *reprinted in* 1959 U.S.C.C.A.N. 2318, 2324. The individual respondents sought such an accounting for the benefit of all of IFFA's members.

House Report No. 741 further states, "[b]ecause union funds belong to the members they should be expended only in furtherance of their common interest. A union treasury should not be managed as though it were the private property of the union officers, however well intentioned such officers might be, but as a fund governed by fiduciary standards." *Id.* at 7-8. Here, the individual respondents sought an accounting precisely because they were concerned that IFFA officers would continue to spend the TWA flight attendants' dues monies for their own interests if IFFA lost the representation election.

The Court of Appeals for the Eighth Circuit correctly rejected the notion that the individual respondents could not prevail because they did not seek relief on behalf of IFFA. In circumstances such as these in which recovery is sought on behalf of the entire membership, the Court of Appeals concluded that "bringing suit for the benefit of the labor organization was indistinguishable from bringing suit for the benefit of the real owners of the union funds—the TWA flight attendants." Pet. App. 15.

In its opinion, the Court of Appeals expressly relied upon House Report 741. *Id.* The decision unequivocally comports with Congress' view that union funds belong to the members and should only be spent to advance their interests. The decision is also fully consistent with the statutory language of Section 501(a).

IFFA officer petitioners repeatedly assert that this action was brought for and benefits the IAM. Petition for Writ of Certiorari ("Pet.") 15, 18. To support this argument, petitioners claim that the complaint seeks to have IFFA's assets transferred to the IAM and that the Court of Appeals' decision gave the IAM control over IFFA's assets. Pet. 15, 18.

This simply is not supported by the record. First in their complaint, respondents IAM and the individual IFFA members sought the transfer of the remaining funds to the IAM only as trustee; the transferred funds were to be held for the benefit of the TWA flight attendants or to be distributed to the TWA flight attendants on a pro rata basis. J.A. 20. Second, the Court of Appeals' decision transfers only the remaining dues monies to the IAM and not all of IFFA's assets. Pet. App. 19. Third, the dues monies are transferred to the IAM for return to the flight attendants. Indeed, the IAM does not stand to gain a single dollar from IFFA's treasury. Pet. App. 19.

The dues monies IFFA held were paid by the TWA flight attendants with the expectation that those monies would be used for contract administration and collective bargaining on their behalf. When IFFA lost its certification to represent the TWA flight attendants, the petitioners intended to continue to use those monies to pay themselves salary and benefits. To justify keeping their union offices, officer salaries, and benefits, petitioners determined that IFFA would have a new principal purpose: organizing the flight attendants at Continental Airlines. The Court of Appeals below recognized that the expenditure of the TWA flight attendants' dues monies for such purposes did not advance their common interests. In this regard, the Court of Appeals' decision further effects Congress' intent that union officers not be permitted to manage a union treasury as if it were their own property.

Moreover, the decision below is in conformity with the principles set forth by the Court of Appeals for the Third Circuit in *Sabolsky v. Budzanoski*, 457 F.2d 1245 (3d Cir. 1972). In *Sabolsky*, the court held that a cause of action existed under Section 501 when union officers spent union funds to maintain non-functioning locals solely to preserve the officers' political power. *Id.* at 1248-51. In the instant case as well, petitioners seek to spend IFFA's treasury solely for the purpose of maintaining their union offices.

Rather than address the statutory language, legislative history, and precedent that support the decision below, petitioners argue that the decision in this case conflicts with the decision of the Court of Appeals for the Ninth Circuit in *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968). Pet. 11-18. That simply is not the case.

In *Phillips*, a local union voted to disaffiliate from its international and join another union. Prior to the vote, the local's officers had placed the local's assets within the control of the international as a defensive measure. After the local disaffiliated from the international, the new local president sued the former local officers for breach of fiduciary duty to recover the local's assets for the former members of the local. The Ninth Circuit concluded that the suit was not brought on behalf of the union. *Phillips*, 403 F.2d at 832.

Petitioners' claim that *Phillips* conflicts with the decision in this case cannot withstand scrutiny. In *Phillips*, the union had numerous locals representing over 170,000 employees in the United States and Canada. *Id.* at 827. In that case, distributing union funds to one distinct group of former union members could not be for the benefit of the union as a whole nor the entire membership as a group. Moreover, the former local's assets could be utilized by the international union to advance the interests of the remaining union members.

Phillips addresses the demise of a local within an international union representing employees in several different collective bargaining units, a situation not uncommon among unions. It does not address the unusual situation presented here, where a union that represented a single craft or class of a single employer lost its sole certification. The petitioners cannot claim that in this particular situation, the Court of Appeals for the Ninth Circuit would have reached a different outcome than the Court of Appeals below. Accordingly, there is no conflict between the Eighth and Ninth Circuits.

2. Petitioners further argue that the lower court did not properly defer to their interpretation of IFFA's constitution regarding the union's mission and, as a consequence, IFFA will be forced to cease its existence. Pet. 24-28. Respondents do not dispute that judicial deference to a union's interpretation of its constitution is appropriate. Pet. 25-26. However, the petitioners would have had the lower court defer not to the union's long-standing interpretation of its constitution, but rather to their own hastily-adopted reinterpretation of the union's purposes on the eve of the loss of certification.[1]

In fact, the Court of Appeals for the Eighth Circuit expressly looked to IFFA's constitution in reaching its decision. The Court of Appeals noted that "[g]enerally, unions provide for the disposition of union funds upon decertification or dissolution in their constitution or by-laws. In such situations, the contract between the union and its members provides the mechanism to dispose of

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[1] Organizing other flight attendants was not previously one of IFFA's purposes. At the preliminary injunction hearing, the founding President of IFFA, Arthur Teolis, testified that IFFA was created for the purpose of providing a union that solely represented the TWA flight attendants. J.A. 262. Mr. Teolis further explained that IFFA had engaged in only one attempt at organizing, at the now defunct Air Florida, in early 1980. The TWA flight attendants vehemently opposed and resented the organizing effort at Air Florida and IFFA never attempted organizing again. J.A. 263.

union funds." Pet. App. 14. In this unique situation, however, the Court of Appeals found that "IFFA made no provision for the disposal of union funds in the event its only members elected a new bargaining representative." *Id.* Only after referring to IFFA's constitution and discovering that no such provision existed, did the Court of Appeals rely upon principles of equity to dispose of the dues monies.

Additionally, petitioners' contention that the lower court's decision required IFFA to cease functioning simply lacks merit. Pet. 27. The decision only prohibits petitioners from using the TWA flight attendants' dues monies for purposes that do not advance their interests. If petitioners wish to maintain IFFA as an organization, they may do so using funds derived from other sources. Indeed, the Court of Appeals below specifically stated IFFA has the right to retain funds derived from other sources. Pet. App. 18 n.7, 19.

3. The petitioners also contend that the Court of Appeals for the Eighth Circuit placed undue restrictions upon IFFA's right to use union funds for organizing purposes. Pet. 19-24. They argue that the Court of Appeals' decision imposed "a fiduciary duty upon IFFA's officers to refrain from the expenditure of union funds on organizing activities. . . ." Pet. 24. They further contend that the lower court departed from the judicial deference generally shown a union in the regulation of its own affairs.

It bears emphasis, however, that the Eighth Circuit only limited the petitioners use of the dues monies paid by the TWA flight attendants for matters that did not advance their interests. The Court of Appeals did not limit petitioners' use of other funds for organizing. Pet. App. 17-18, 18 n.7. The lower court's narrow opinion thus impacts IFFA's internal affairs only to the extent necessary to remedy the breach of fiduciary duty committed by petitioners.

CONCLUSION

This case presented the Court of Appeals for the Eighth Circuit with unusual circumstances not likely to be repeated. Specifically, this case involves a labor organization that no longer represents any employees as a result of the loss of its sole certification, and a union constitution that, unlike most others, does not provide for the disposition of dues monies in the event of a decertification. The Eighth Circuit's decision addresses only this narrow set of facts. That decision is carefully drawn from and fully supported by the statutory language and legislative history of Section 501. Moreover, the legal principles set forth by the Court of Appeals for the Eighth Circuit clearly do not conflict with decisions rendered by other circuits. Finally, the decision demonstrates appropriate judicial deference to a union's regulation of its own affairs, interfering only to the extent necessary to remedy a breach of fiduciary duty. Accordingly, we respectfully request that the Court deny the petition for writ of certiorari.

Respectfully submitted,

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BARRY SCHIMMEL, et al.
Petitioners,

v.

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, et al.
Respondents.

Petition For A Writ Of Certiorari
To The United States Court of
Appeals For The Eighth Circuit

REPLY TO BRIEF IN OPPOSITION

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13 pp

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

THE PARALLELS BETWEEN THE NINTH CIRCUIT'S DECISION IN PHILLIPS AND THIS CASE ARE STRONG AND THE CONFLICT IS CLEAR 1

THE PETITION FOR A WRIT OF *CERTIORARI* PRESENTS IMPORTANT QUESTIONS CONCERNING THE APPLICATION OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT AND CONCERNING THE INTERPRETATION OF UNION CONSTITUTIONS 4

THE RESPONDENTS' STATEMENT OF FACTS IGNORES THE FINDINGS MADE BY THE DISTRICT COURT AND THE DEFERENCE THAT MUST BE ACCORDED SUCH FINDINGS 7

CONCLUSION 10

TABLE OF AUTHORITIES

Cases:

Anderson v. City of Bessemer City, 470 U.S. 564 (1985) 8

Black Hills Institute of Geological Research v. United States Department of Justice, 978 F.2d 1043 (8th Cir. 1992) 8

Hosna v. Groose, 80 F.3d 298 (8th Cir. 1996) 7

McNamara v. Johnston, 522 F.2d 1157 (7th Cir. 1975) 6

Phillips v. Osborne, 403 F.2d 826 (9th Cir. 1968) 1, 2, 4, 9

Statute:

29 U.S.C. § 501 1

29 U.S.C. § 501 . . . . . *passim*

Legislative History:

H. Rep. No. 741, 86 Cong., 1st Sess., 81 (1959) . . 3

THE PARALLELS BETWEEN THE NINTH CIRCUIT'S DECISION IN PHILLIPS AND THIS CASE ARE STRONG AND THE CONFLICT IS CLEAR

The respondents-plaintiffs attempt to dismiss the conflict with the Ninth Circuit's decision in *Phillips v. Osborne*, 403 F.2d 826 (9th Cir. 1968), essentially by arguing that the facts in both cases are not 100% identical. But the point at issue *is* the same. And the factual parallels of the two cases are quite strong.

Consider those parallels. In both *Phillips* and this case (1) disaffected members decided to try to sway the loyalty of the employees from an incumbent union to a rival union; (2) those members were successful in forcing an election; (3) the employees voted to be represented by the rival and raiding union; (4) immediately thereafter the officers of the incumbent union took steps to safeguard the incumbent union's assets; (5) which caused disaffected former members of the incumbent to object and file suit; (6) the defendants in the suit were the officers of the incumbent, sued in their official capacity;[1] (7) the suit alleged a breach of fiduciary duty under § 501 of the LMRDA, 29 U.S.C. § 501; (8) the suit sought to seize the assets of the incumbent union; (9) in

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[1]The defendants here are being sued as individuals as well as in their official capacity.

order to distribute those assets to certain former members of the incumbent who continued to work in the unit formerly represented by the incumbent; and (10) the plaintiffs' litigation was financed by the rival and raiding union (which obviously stood to benefit from the demise of the incumbent).

In the face of this, plaintiffs are reduced to arguing that this Court should not grant *certiorari* because the facts of the two cases are not completely identical (indeed, the facts of the two cases are only substantially identical). It is true, as plaintiffs say, that in this case the employees voted to change from an independent union to an international union; while in *Phillips* the employees voted to abandon an affiliation with an international union in order to become part of a new (and therefore independent) union. But in making this seemingly irrelevant point plaintiffs ignore another obvious parallel: as far as can be gleaned from the Ninth Circuit's opinion in *Phillips*, the incumbent union there (Local 580 of the Pulp, Sulphite & Paper Mill Workers, AFL-CIO), *represented no other employees other than those in the unit which voted to change unions*.

Faced with these facts, the Ninth Circuit in *Phillips* looked to the legislative history of the LMRDA. It was struck by the parallel Congress had consciously drawn between a suit under § 501 and a shareholders'

derivative suit. The court noted that a shareholders' derivative suit *must* be brought for the benefit of the corporation itself and not for the benefit of the individual shareholders. Thus, the Ninth Circuit held that a § 501 suit must be brought for the benefit of the labor organization itself; and ruled that former members (who were, as the court noted, being financially supported by a rival and raiding union) could not bring suit to seize the assets of the local for the benefit of the individuals the local formerly represented.[2] In so ruling, the court cited to H. Rep. No. 741, 86 Cong., 1st Sess., 81 (1959). *This is the very same report to which the Eighth Circuit cited in its opinion in this case and upon which plaintiffs rely so heavily in their brief opposing certiorari.* (Pet. App at 15, Res. Br. at 9)

Obviously, then, this Court should grant *certiorari* to straighten this mess out. Rarely, if ever, are cases which give rise to conflicts among the circuits 100% factually identical. Indeed, we would respectfully suggest that rarely are the cases which give rise to the conflict more similar than those which are present here. The mere fact that this case has arisen and conflicts with

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[2]The district court below relied upon *Phillips*, *Pet. App.* 20, 27-29, 35-36; and it also drew the analogy to a shareholders' derivative suit. *Id.* at 35.

Phillips belies the argument that the issue is unimportant and will never occur again.

THE PETITION FOR A WRIT OF *CERTIORARI* PRESENTS IMPORTANT QUESTIONS CONCERNING THE APPLICATION OF THE LABOR MANAGEMENT REPORTING AND DISCLOSURE ACT AND CONCERNING THE INTERPRETATION OF UNION CONSTITUTIONS

The respondents contend that this case is not appropriate for Supreme Court review because it involves a narrow set of facts. On the other hand, the respondents interpret the decision below to establish that the petitioners have violated their fiduciary duty by using dues money to organize other flight attendants.[3] The

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[3]In support of their conclusion that it was a breach of fiduciary duty for the IFFA officers to utilize union dues for organizing, the respondents rely on the testimony of Arthur Teolis, a former officer of IFFA who assisted the IAM in its raid. Res. Br. at 12, note 1. Although Teolis testified that IFFA had only engaged in one other organizing campaign, at Air Florida, the record also demonstrated that IFFA had sought to organize the TWA ticket agents and the employees of Trans World Express. Jt. App. at 241-43. The respondents' opposition to organizing activities also ignores the objective set forth in the IFFA constitution of uniting within IFFA all men

(continued...)

petitioners have failed, after extensive research, to find a single case which holds that it is a breach of fiduciary duty to spend union funds for organizing. Such a drastic redefinition of union officers' fiduciary duties would certainly affect the entire labor movement.

As we noted in the petition for *certiorari*, this Court has yet to address the proper application of § 501 of the LMRDA. However, those courts which have considered the statute have expressed reluctance to interfere with the business decisions made by unions' governing bodies. Pet. for *Cert.* at 19-24. A decision to spend union funds on such a basic union function as organizing would seem to come well within the discretion of union leaders. The eighth circuit's decision, which departs from the general principle accepted by courts which have considered § 501, and finds a purported limitation under the LMRDA on the ability of the IFFA officers to spend union funds for organizing, raises a significant issue for Supreme Court review.

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[3](...continued)
and women in the airline industry. Pet. App. at 48-49. In light of the evidence of IFFA's past and present involvement in organizing activities, the district court rejected the respondents attempts to interfere with IFFA's "using its assets for union business . . ." Pet. App. at 33.

Similarly, the opportunity for this Court to consider the principle according judicial deference to union interpretation of union constitutions is a compelling reason for granting *certiorari* here. The respondents contend that, because the IFFA Constitution did not have a specific provision for disposition of union assets following decertification, the eighth circuit was entitled to engraft its own principles of "equity" onto the IFFA Constitution. That position is contrary to IFFA's own constitutionally based interpretation of its ongoing purposes, and is thus contrary to the widely accepted principle of judicial deference to a union's construction of its constitution. See Pet. for *Cert.* at 24-28.

The members of IFFA had paid **membership** dues to IFFA. As elected officers of IFFA, the petitioners used those dues for the purposes of the organization the respondents had voluntarily joined.[4] The LMRDA was not intended to place substantive limits on union expenditures which do not violate the governing documents of the organization. *See e.g., McNamara v. Johnston*, 522 F.2d 1157 (7th Cir. 1975). Because this petition pro-

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[4]IFFA had in place procedures by which non-members could object to the use of agency fees for purposes not directly related to collective bargaining. Because the individual respondents purported to be members of IFFA, they would not have availed themselves of the objection procedures.

vides the Court with an opportunity to consider the important principle of judicial deference to a union's interpretation of its own constitution, a principle which the eighth circuit ignored, this case is appropriate for review upon a writ of *certiorari*.

THE RESPONDENTS' STATEMENT OF FACTS IGNORES THE FINDINGS MADE BY THE DISTRICT COURT AND THE DEFERENCE THAT MUST BE ACCORDED SUCH FINDINGS.

The respondents statement of the case is misleading because it does not reflect what the district court found. Their brief in opposition ignores the fact that the district court not only heard the evidence, but it also made credibility determinations.[5] The principle is well established that a reviewing court must give substantial deference to the findings made by the district court, especially with respect to findings based on the credibility of the witnesses. The reviewing court must accept the trial court's findings of fact unless they are clearly erroneous, *see Hosna v. Groose*, 80 F.3d 298, 303 (8th Cir. 1996), and must give the trial court substantial deference

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[5]The district court found that IFFA has acted to preserve IFFA assets, Pet. App. at 32, and that IFFA officers had not appropriated IFFA funds for their personal use. Pet. App. at 37.

with respect to its credibility determinations. *Black Hills Institute of Geological Research v. United States Department of Justice*, 978 F.2d 1043, 1044 (8th Cir. 1992); *also c.f. Anderson v. City of Bessemer City*, 470 U.S. 564 (1985) (discussing the appropriate application of the clearly erroneous standard). The eighth circuit did not follow that principle in this case.

The respondents attempt to paint a sinister face on the IFFA officers' transfer of assets, but the district court credited the testimony that IFFA transferred the assets to protect them. Pet. App. at 32. In fact, those transfers occurred in the wake of extreme disloyalty by IFFA officers Sherry Cooper and Rocky Miller. The entire chain of events which led to this case arose because IFFA's former president, Sherry Cooper, had abused her office by providing the IAM with mailing lists and other assistance during its membership raid on IFFA. Pet. App. at 8-9.

After Cooper had resigned in an attempt to avoid her trial on internal union charges, Rocky Miller assumed the office. His first act as IFFA president was to issue a letter supporting the IAM's raid. Jt. App. at 283. The respondents charge that IFFA acted to prevent Miller from assuming a leadership role, when the record showed that he had failed to even set foot in IFFA offices for the last seven months in which IFFA served as the collective bargaining representative for the TWA

flight attendants. Jt. App. at 242. Miller failed even to appear to defend against the charges of dual unionism that had been levied against him.

The respondents also charge the IFFA officers with acting to change the purpose of the organization when it is clear that the resolution at issue drew its language and meaning from the objectives set forth in the IFFA constitution. The IFFA constitution provides as its first objective to "unite in this Union . . . all working men and working women employed in the airline industry . . . ." Pet. App. at 48-49. Therefore, one cannot reasonably argue that the petitioners changed the constitution when they set about organizing other flight attendants. The resolution also reiterated IFFA's goals to advance the interests of TWA flight attendants as well as those employed throughout the airline industry. Pet. App. at 40-43.

But in the end, it appears that the respondents' greatest objection to the continued functioning of IFFA is that IFFA's ongoing activities are contrary to the interests of the IAM. That factor is what makes the decision by the court of appeals so clearly in conflict with the *Phillips* decision. The plaintiffs in this case, just like the plaintiff in *Phillips*, are financed by and acting on behalf of a rival labor organization. The *Phillips* court recognized that § 501 of the LMRDA was not designed to provide adherents of a rival union with

a tool to disrupt the operation of their former union. 403 F.2d at 832. Because it is contrary to the IAM's interests for IFFA to continue to compete for the right to represent all flight attendants, the IAM has attempted to use § 501 to deprive IFFA of its assets. Whether or not the LMRDA can be used for such purposes is a question upon which the eighth and ninth circuits disagree and, accordingly, should be decided by the Supreme Court.

CONCLUSION

For each of the reasons stated above and in the Petition for *Certiorari*, the petitioners respectfully request that *Certiorari* be granted.

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